

DEFENSE LOGISTICS ACQUISITION DIRECTIVE

I. The Defense Logistics Acquisition Directive (DLAD) implements the Federal Acquisition Regulation (FAR), Defense FAR Supplement (DFARS), and other DoD publications. It establishes procedures and delegations of authority governing the acquisition of supplies and services by the Defense Logistics Agency under Chapter 137, Title 10, of the United States Code or other statutory authority.

II. Internal operating guidance to implement this directive may be issued by Heads of Contracting Activities and the Defense Reutilization and Marketing Service (DRMS) to the extent indicated in DLAD 1.301.

III. SIGNIFICANT UPDATES. Updates are indicated in bold italics.

NOTE: The rewrite of Part 19 and 25 is ongoing and will be issued under separate cover.

A. This revision supersedes Revision 4.

B. The following Numbered FARS Deviations and DLA PROCLTRs are incorporated into this edition.

1. FARS DEV 97-07 - Class Deviation from Federal Acquisition Regulation (FAR) 4.804-5(a)(14),(15), and (b)(9), and Defense FAR Supplement (DFARS) 204.804-2(1)(iv), dated August 14, 1997.

2. FARS DEV 98-02 - Deviation to DLAD 15.807(b) and 49.402-6, dated February 27, 1998, to DESC.

3. PROCLTR 97-17 - Determinations of Commerciality and Price Reasonableness, dated June 10, 1997, (2.101, 12.102, 15.803, 15.804-8, 15.805-2(90).

4. PROCLTR 97-18 - Contracting Officers Warrants Reporting, DLAD 1.602-1, dated June 13, 1997.

5. PROCLTR 97-26 - Application of Special Simplified Procedures to Certain Commercial Items (FAR Case 96-307/FAC 90-45, Item VII), dated September 16, 1997, (5.203, 7.102, 11.103, 13.106-2, 13.106-90, 13.601, 13.602).

6. PROCLTR 97-28 - Contract Quality Requirements, dated September 22, 1997, (46.202-3(b), 46.202-3-90, 52.246-9001, -9003, -9004).

7. PROCLTR 97-29 - Delegation of Authority for Multiyear Determinations to Heads of Contracting Activities, dated September 29, 1997, (17.104, 17.105-1).

8. PROCLTR 97-33 - Offeror Representations, Certifications, and Fill-in Information - Electronic Commerce (EC), dated October 3, 1997, (12.301, 13.103, 13.104, 14.203, 17.7501, 19.304, 52.213-9004).

9. PROCLTR 97-34 - Ensuring Adequate JWOD Participation in DLA's New Business Initiatives, dated December 10, 1997, (8.702, 15.605, 16.504, 52.215-9004, -9005, -9006, 90.1101).

10. PROCLTR 98-01 - The DLA Mentoring Business Agreements (MBA) Program, dated January 6, 1998 (16.504, 19.71, 19.9001, -9002, -9003, -9004, -9005, -9006, -9007, 52.219-9002, -9003).

11. PROCLTR 98-03 - Justification and Approval (J&A) Format, dated March 9, 1998 (6.303-2).

12. PROCLTR 98-07 - Acquisition of Information Technology (IT), DLAD Part 39.

13. PROCLTR 98-09 - Centralized Contractor Registration - Final DFARS Rule (DFARS Case 97-D005), dated May 21, 1998, (4.7303(b)(2)(d).

14. PROCLTR 98-12 - List of Firms Not Eligible for Defense Contracts, dated June 18, 1998, (9.104-70, 9.405-2).
 15. PROCLTR 98-15 - Transportation Preference Evaluation Factor, dated July 10, 1998, (15.304(c)(90), 47.305-7(b)(90)).
 16. PROCLTR 98-16 - Contract Quality Requirements, dated July 13, 1998, (46.202-3(b), 46.202-3-90, 52.246-9001, -9003, -9004).
 17. PROCLTR 98-19 - Defense Transportation Code (DTC) 4, dated August 14, 1998, (25.7302-90(a) and (c), adds 52.225-9002, deletes 47.305(90) and 52.225-9001).
 18. PROCLTR 98-21 - Cost of Late Contract Delivery, dated August 21, 1998, (43.103(a)(90)(2)).
 19. PROCLTR 99-03 - Indefinite Delivery Purchase Orders (IDPOs)(DLAD Subpart 13.90)Conducted Under FAR Subpart 13.5, Test Program for Certain Commercial Items, dated March 1, 1999 (13.390-2).
 20. PROCLTR 99-04 - Government Source Inspection (GSI), dated May 17, 1999 (13.106-90, 14.201-8, 15.605, 52.213-9001).
 21. PROCLTR 99-06 - Incorporating Provisions, Clauses, and Other Contract Requirements by Reference in DLA Solicitations, Purchase Orders, and Contracts (FAR/DLAD 52.102, dated June 23, 1999 (52.102)
 22. PROCLTR 99-13, Revisions to Provisions at DLAD 52.211-9003 and 52.217-9002.
- C. Other Changes.

1. Changes are made at 1.404 and 90.704 to reflect the delegation of class deviation approval authority to the Executive Director, Procurement Management.
2. The requirement at 1.602-2(91), that contracting officers certify in writing annually that they have read the DoD Inspector General Handbook entitled Indicators of Fraud in DoD Procurement is deleted. This reference is obsolete.
3. References at DLAD 1.603-1(a) and elsewhere, to the Administrator DAPSC are changed to head of the Headquarters Complex Commandant.
4. DLAD 1.603-3(a)and (b) are renumbered to accurately reflect FAR/DFARS formatting. Additionally, 1.603(b) is modified to add coverage resulting from the addition of DFARS 201.603-3(b).
5. DLAD 1.603-93(a) and 90.602-3(a)(1) and (2) are edited to delete specific reference to the DCPSO COR/COTR computer-based training. OMB also offers a computer-based COR/COTR course. There may be other suitable courses available.
6. DLAD 1.690-6(f)4 has been deleted. It referenced DLAD 12.303-90(a)(6), which had been previously deleted.
7. DLAD 1.690-7(f) replaced wording which was accidentally dropped from Rev. 4: ". require further approval by HQ DLA. However, . . .".
8. In DLA the Center Senior Procurement Official (CSPO), as defined in DLAD 1.601-90 is the chief of the contracting office.
9. In DLAD 2.101, the title for the Chief of the Contracting Office for DESC is changed from Director, Direct Delivery Fuels CBU to reflect the correct title, Director, Alternative Fuels.
10. The coverage at 4.506 is deleted in its entirety. The requirement for HCA approval to exempt classes of procurements from processing through FACNET was deleted from the FAR by FAC 97-09.
11. FAR 5.203(a)(2) limits the applications of the combined synopsis/solicitation procedure (see FAR 12.603) to commercial items. Therefore, the first sentence at DLAD 5.203(a)(2) is deleted. The remainder of 5.203(a)(2), which addresses the incorporation by reference of information exceeding the 12,000-character limitation in the CBD synopsis format, is moved to 12.603(a)(1).

12. New guidance at 5.207(e)(4) and revisions at 12.102(a)(91) clarify that any time an item other than the exact approved item cited in the PID is offered, the item is considered an alternate item and requires evaluation for technical acceptability. The guidance advises that solicitations should describe the circumstances when the instant acquisition will and will not be delayed and that the provision at 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items, or a similar provision, may be used. This information was provided in Attachment 2 to PROCLTR 96-05, dated February 26, 1996, but was never formally incorporated in the DLAD.

13. Changes are made to Parts 6, 17 and 35 to delete certain coverage relative to Broad Agency Announcements which is no longer required.

14. Guidance at 6.101(a)(93)(i) is corrected to replace "Government's minimum needs" with "Government's needs," consistent with FAC 90-45, Item VII, as issued by PROCLTR 97-26, dated September 16, 1997.

15. The requirement at 6.401 to document contract files with the reason for not using sealed bids is deleted pursuant to FAC 97-14 which removed the requirement from the FAR.

16. DLAD 7.102 is revised at paragraph (b) to clarify that a Business Case Analysis shall also be prepared for shifts to other than a commercial practice, and that it shall cover all items eligible for order under the long-term arrangement; and at paragraph (b)(94) to require inclusion in the acquisition plan and resulting long-term contracts and agreements of cost and delivery metrics.

17. DLAD Subpart 7.2, Planning for the Purchase of Supplies in Economic Quantities, is added to provide for incorporation of a tailored or locally developed clause to secure price break pricing or discounts across the range of potential order quantities under long-term contracts.

18. DLAD 8.605 is supplemented at subparagraphs (a)(2) to identify the URL and mailing address for requesting waivers from UNICOR; and at (c)(90) for appealing waiver denials.

19. DLAD 8.7204-94-- The Definitization and Limitation of Government Liability portions of the standby letter contract for inclusion in Industrial Preparedness agreements are replaced with the respective DFARS and FAR clauses, as revised.

20. DLAD 9.106-1(5) is revised to reflect that there is no longer a Lab Testing program at DLA; it is titled Product Verification Program.

21. Guidance at 10.002(d)(2) is revised and moved to 12.102(92). The revised language clarifies that when a solicitation was not issued using FAR Part 12 but an acceptable commercial item is subsequently identified, the contracting officer does not have to resolicit but may negotiate Part 12 terms and conditions into the purchase order or contract.

22. DLAD 11.302 is revised to clarify that technical/quality personnel are responsible for advising the contracting officer if offers of surplus material will not be considered; and, if offers of surplus material will only be evaluated to accommodate specified unique contingencies, a notice must be included in the solicitation providing this information to prospective offerors. Guidance is added to clarify the application of the clauses at FAR 52.211-5, Material Requirements, and DLAD 52.211-9000, Surplus Material, and the provision at DLAD 52.211-9003, Commercial Items. An editorial correction is made, renumbering subparagraph (b) as subparagraph (90).

23. Revisions to 11.302, the clause at 52.211-9000, and the provision at 52.211-9003 reflect changes made by the interim guidance for processing and evaluating offers of Government Surplus material as issued by DLSC-LES memorandums dated June 1, 1999 and June 18, 1999.

24. DLAD 12.102(a)(90)(i) is revised to clarify that a "Y" ("Yes") in the commercial field in the CTDF indicates that a technical review has resulted in a preliminary determination that the item is commercial, but the contracting officer makes the final determination in accordance with 12.102(90)(1).

25. 12.102(90)(1) is revised to clarify that the contracting officer "has the authority to determine," in lieu of "is responsible for determining," if an item meets the commercial item definition, and that a determination is not required for every acquisition.

26. 12.102(90)(2) is revised to clarify that the phrase "of a type customarily used for nongovernmental purposes" means a governmental entity is not the exclusive end user. Part 12.102(90)(2) is also revised to include the definition of "general public" that formerly appeared at FAR 15.804-3(c)(5). Although the term "general public" no longer appears in FAR Part 15, it appears in the FAR Part 2 definition of "commercial item," and its meaning has not changed.

27. New guidance at 12.102(90)(2)(ii) clarifies the meaning and appropriate application of the phrase "offered for sale, lease, or license to the general public."

28. Obsolete references are corrected throughout, to reflect the conformance of DLAD Parts 13 and 15 to the rewrites of FAR Parts 13 and 15 (and DFARS 213 and 215).

29. FAR Part 13 and DFARS Part 213 have been extensively reorganized since DLA published Revision 4 of the DLAD. As a consequence, virtually the entire DLAD Part 13 has been renumbered. PROCLTRs 97-26 and 97-33 added new material to the Part. Finally, DLAD Part 13 has undergone substantial editorial revision.

30. Coverage at paragraph (a) of 14.404-1 Cancellation of invitation after opening is deleted as no longer required. Editorial changes are made to paragraph (c).

31. FAR Part 15 and DFARS Part 215 have been extensively reorganized since DLA published Revision 4 of the DLAD. As a consequence, virtually the entire DLAD Part 15 has been renumbered. In addition, the Part has undergone substantial editorial revision.

32. DLAD 15.406-1 specified prenegotiation review dollar thresholds are raised and approval levels lowered to maintain consistency with recent organizational structural changes as DLA shifts emphasis to fewer, but higher dollar value, awards.

33. DLAD 15.407-1(b)(7)(1) is added to furnish information concerning the Internal Revenue Code rate. Cross-reference to this paragraph is added at 32.610(b)2 and 32.613(h)(3), which correspond to other FAR paragraphs specifying use of this rate.

34. Definition of the phrase "Existing EPA clause" as used throughout 16.203 was added at 16.203(90).

35. The final rule coverage of permanent class deviation to FAR 16.203-1 and 16.203-4(a) granted to DLA (DAR Tracking Number 95-D0003, FARS Deviation 96-10), which added part 5416 to 48 CFR Chapter 54 (Federal Register dated Monday, Aug 2, 99), is at DLAD 16.203-1(a)(90) and -1(c)(90), 16.203-2(90), 16-203-3(90) and 16.203-4(90). Other changes to 16.203 were necessary to distinguish this coverage from pre-existing DLAD 16.203 coverage.

36. A revision at DLAD 16.203-3(93) affirms that the requirement for DLSC-PPB presolicitation review and approval of EPA clauses applies to acquisitions of commercial, as well as noncommercial items.

37. An exception is created for unpriced purchase orders from most undefinitized contractual action requirements (17.7404-3(90), 17.7404-4(90), 17.7404-6(90), and 17.7406(a) and (b)).

38. DLAD 17.9202(b) listing of suggested procedures has been expanded to include the identification of any estimating system deficiencies, system approval status, and whether a reopener clause or other technique is recommended, when use of a reopener clause is being considered.

39. Coverage is provided at 19.804-2(a)(1) relative to time frames for receipt of responses from the SBA to conform to new DFARS coverage implementing an MOU between DoD and the SBA. This MOU allows direct award of 8(a) contracts.

40. Coverage at 22.608-4 is deleted. Referenced FAR Coverage was deleted by FAC 90-43.

41. DLAD 23.303(90) is clarified to state that contractors are to submit their copies of Material Data Safety sheets in accordance with the "latest version" of the Federal Standard 313.

42. The coverage at 28.103-1 on Performance and Payment Bonds has been deleted. A decision to include these bonds in other than solicitations and contracts for construction is properly within the purview of the Contracting Officer.

43. Former DLAD 30.101(90), addressing availability of interim guidance is deleted.
44. DLAD 30.7001-2(e) is expanded with additional information concerning the semiannual "Renegotiation Act" rate. Cross-reference to this paragraph is added at 31.205-10(a)(1)(ii)(C), 31.205-19(a)(3)(i), 32.407(a)(2) & (b), 32.610(b)(2), 32.613(h)(3) & (i), 32.614-1(c), 32.907-1(d) & (e) which correspond to other FAR paragraphs specifying use of this rate. Similarly, cross-references are also added at 15.404-71-3(b)(7), 30.7100(c)(1) and 30.7101-1(a), which correspond to DFARS paragraphs
45. DLAD 32 has been renumbered in conformity with current FAR. Additionally, former paragraph 32.190, Submission of contract instruments for audit by the U.S. General Accounting Office, is deleted
46. The DLAD 42.7101(90)(2) minimum threshold for chief of the contracting office approval to request a voluntary refund due to overpricing is raised from \$25,000 to \$50,000, and the former \$50,000 ceiling for delegability of such approvals is now \$250,000.
47. DLAD 46.202-3 and 46.202-3-90 were renumbered to correspond to the FAR and DFARS subparts at 46.202-4 and 246.202-4.
48. The prescription for the provision at 52.211-9001, Market Acceptance, is moved from 11.302(90) to 11.103(90) to correct an improper placement under Subpart 11.3, Acquiring Other Than New Material, Former Government Surplus Property, and Residual Inventory. The prescription is also revised to include the conditions for use of Alternate I.
49. DLSC-BB memo dated October 8, 1998 advised that the fees for Engineering Standardization Activity (ESA) support had increased and provided the new rates. To reflect these changes, editorial revisions are made to the provisions at 52.211-9003, Conditions for Evaluation of Offers of Surplus Material, and 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. These changes were previously issued by DLSC-PPP to contracting office policy team chiefs on November 13, 1998 and took effect on that date.
50. The provision at 52.211-9003, Conditions for evaluation of offers of surplus material, is corrected to delete the language that indicated when an evaluation of an offer of surplus material could not be completed before the expected contract award date due to urgent requirements for the item, the offer of surplus material would not be considered for the present procurement but would still be evaluated for acceptability for future procurements for the same item. This is incorrect, because each offer of surplus material is unique and must be evaluated in the context of the specific offeror, the current condition of the material, and other factors unique to the particular offering.
51. To conform to the Standard Procurement System (SPS), the application of agency provisions or clauses to acquisitions of commercial items will be indicated in their prescriptions, and the SPS clause logic will select the appropriate provisions and clauses. Accordingly, the provision at 52.212-9000, Mandatory Provisions - Commercial Items, and its prescription at 12.301(90) are deleted. Instead, the prescription at 33.106(c) is revised to make use of the provision at 52.233-9000, Agency protests, mandatory for acquisitions of commercial items. Consistent with the authority at FAR 12.301(f), senior procurement executive approval will be obtained when use of an agency provision or clause will be mandatory for commercial items.
52. The provision at 52.214-9000, Postponement of Opening of Offers, along with the prescriptive language at 14.201-5(b)(90) and (former) 15.406-5(b)(91) has been deleted as duplicative of language in paragraph (h) of FAR 52.214-7 and paragraph (c)(3)(viii) of FAR 52.215-1.
53. DLAD Subpart 90.5 has undergone substantial editorial revision and updating of references due to the recent rewrite of FAR and DFARS 15 and other parts.
54. Former DLAD 90.8, Undefined Contractual Actions Report, is deleted.
55. Last three sentences are deleted from DLAD Appendix E-201.1. Additionally, the DLA Spare Parts Breakout Program manager (ATTN: DLSC-LEP) is the current focal point cited in E-502(c) for receipt of the submission of reports

D. Minor editorial changes have been made (additions in bold and italics) for various reasons including:

1. Changes made throughout the DLAD to reflect the realignment of Material Management (MM) as the Defense Logistics Support Command (DLSC), and the realignment of Acquisition (AQ) as the Defense Contract Management Command (DCMC) according to General Order No. 1-98 dated January 6, 1998. Concurrent with this change, the Executive Director, Procurement, DLA, was retitled the Executive Director, Procurement Management. Further, the Office previously titled the Executive Directorate, Contract Management, is now the Commander, Defense Contract Management Command. The individuals in these positions are heads of contracting activities.

2. Changes made throughout the DLAD to reflect the redesignation of the Defense Personnel Support Center (DPSC) as the Defense Supply Center Philadelphia (DSCP) by DPSC General Order No. 01-98, dated December 12, 1997 and DLA General Order No.29-97, dated December 12, 1997.

3. Changes made throughout the DLAD to reflect the redesignation of the Defense Fuel Supply Center (DFSC) as the Defense Energy Support Center (DESC), according to General Order No. 3-98 dated February 10, 1998.

4. Changes made throughout the DLAD to reflect the disestablishment of the Defense Industrial Supply Center (DISC), effective July 2, 1999, and the realignment of mission, objectives and related resources of DISC to the Defense Supply Center Philadelphia (DSCP), according to General Order No. 1-99, dated January 4, 1999.

5. Changes made throughout the DLAD to reflect the disestablishment of the Defense Automated Printing & Support Center (DAPSC), effective July 18, 1999; and the realignment of the Document Automation and Production Service (DAPS) as a Major Subordinate Command (MSC) to report to the Director, DLA, with its headquarters in Mechanicsburg, PA. In addition, the DLA Administrative Support Center (DASC) was realigned in place effective July 18, 1999, as a Field Command, subordinate to and reporting to the DLA Director, Deputy Director, Commanders of Major Subordinate Commands, designated Directors, or Administrators. General Order No. 15-99, dated July 7, 1999.

BY THE ORDER OF THE DIRECTOR

Headquarters Complex Commandant

COORDINATION:

GC:_____ CAH:_____ DLSC-L:_____

DCMC-O:_____ DLSC-P:_____

DCMC-AA:_____

This DLAD revision supersedes DLAD 4105.1, 1994 Edition, Revision 4, January 1, 1998.



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BY THE ORDER OF THE DIRECTOR

MAY 11 2000


R.B. FREDERICK
Acting, Headquarters Complex Commandant

COORDINATION: CAHS, GC

DEFENSE LOGISTICS ACQUISITION DIRECTIVE
GENERAL STRUCTURE

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PART 1

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SUBPART 1.1 - PURPOSE, AUTHORITY, ISSUANCE

1.101 Purpose.

The Defense Logistics Acquisition Directive (DLAD) 4105.1 is issued by the Executive Director, Procurement Management, by authority of the Director, Defense Logistics Agency (DLA). It implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and other Department of Defense publications and, pursuant to FAR 1.304, establishes DLA procedures relating to the acquisition of supplies and services under the authority of Chapter 137, Title 10 of the United States Code, or other statutory authority. This DLAD is not a stand-alone document and must be read in conjunction with the FAR and DFARS.

1.104 Applicability.

(a) This directive is applicable to the contracting function at all DLA activities, but is not applicable to the performance of field contract administration assigned to Defense Contract Management Command (DCMC).

1.105 Issuance.

1.105-1 Publication and code arrangement

This directive is available on the Internet directly from the DLSC-PPP site at: www.procregs.hq.dla.mil and may be downloaded in full text or by Part number. From the effective date of DLAD Revision 5, the Directive will be continually updated on this site as changes occur. Therefore, the most current version is found at the above website. This directive is also transmitted through the Distributed Minicomputer Systems (DMINS) E-Mail by **DLSC-PPP** to DLA field activities that request it in that manner. It is also available through DLAPS on the DLA HQ Local Area Network (LAN). It is available on-line with full data base capability from private sources. DLA field activities desiring this directive in the latter mode should contact their local installation supporting library/publications personnel for subscription requests. The DLAD can also be downloaded via the Internet at: <http://deskbook.osd.mil/deskbook.html>

1.105-2 Arrangement of regulations.

(c) References and citations.

(2) The Defense Logistics Acquisition Directive 4105.1 shall be referred to as the DLAD.

SUBPART 1.2 - ADMINISTRATION

1.201-90 Maintenance of the DLAD.

1.201-91 Amendment of Regulations.

Recommendations for amending the FAR or the DFARS shall be submitted to HQ DLA, ATTN: **DLSC-PPP**. Submittals shall be in the form of a memorandum (without signature block) to the Director, DAR Council and be formatted in accordance with the DAR case guidance provided at 90.7. Recommendations for amending the DLAD shall be submitted in the form of

a letter signed by the chief of the contracting office and be in the format of I. Problem; II. Recommendation; and III. Discussion.

1.201-92 DLAD changes.

Numbered DLAD changes are issued periodically by the Executive Director, Procurement Management, to revise and update the DLAD.

1.201-93 Dissemination and effective date of the regulation (including appendices, revisions, supplements, and manuals).

(a) Chiefs of contracting offices shall ensure that the FAR, DFARS, and DLAD including revisions, are available to all interested individuals.

(b) Compliance with the DLAD, including any revision to the DLAD, shall be permissive on the date of the revision and shall be mandatory 30 days after issuance, unless otherwise provided in the revision.

SUBPART 1.3 - AGENCY ACQUISITION REGULATIONS

1.301 Policy.

1.301-90 Contracting office guidance.

(a) Procedural guidance relative to the FAR, DFARS, and/or DLAD may be issued by heads of contracting activities consistent with FAR 1.304 and DFARS 201.304. This authority is delegable to the chief of the contracting office without power of redelegation. In addition, the Executive Director, Procurement Management, has delegated this authority to the Commander, Defense Reutilization and Marketing Service (DRMS). Requests for approval of any regulatory document meeting the criteria prescribed in DFARS 201.304(1) and (3) shall be submitted to **DLSC-PPP** for submission by the Executive Director, Procurement Management, to the DAR Council Director for approval by the Director, Defense Procurement. The format, general plan, and numbering system of procedural guidance shall be the same as FAR, DFARS, and DLAD.

(b) Defense Supply Centers and DRMS shall furnish HQ DLA, ATTN: **DLSC-PPP**, one copy of each procedural instruction for review after publication. Contracting offices need not separately request approval under DFARS 201.304(1) and will, based on the copy of the procedures provided, be advised by letter if the procedure is disapproved.

1.301-91 Contracting office clauses.

(a) Clauses and provisions that are developed as a result of negotiations or which fulfill a specific and unique requirement of the acquisition, that do not constitute a deviation from FAR, DFARS, or DLAD, and that do not require the approval of the Director, Defense Procurement shall be submitted upon incorporation in a contract to the local contract policy office, or, where no such office exists, to the chief of the contracting office, for review. A copy shall also be forwarded concurrently to HQ DLA, ATTN: **DLSC-PPP**.

(b) Proposed new repetitive use or "substantially the same as" local clauses shall be reviewed by the local contract policy office or, where no such office exists, by the chief of the contracting office prior to use. Reviews should determine essentiality, ensure that the clauses do not contain material differences from those already authorized for use, and ensure that the new circumstances for use of the clauses are appropriate. These are clauses which are not deviations and which otherwise do not require Director, Defense Procurement approval. A copy shall also be forwarded to HQ DLA, ATTN: **DLSC-PPP**, subsequent to review and issuance by the local contract policy office.

(c) DLAD coverage for a local clause which has been approved as a permanent deviation will include the prescription for the use of the clause, the title of the clause, the date of the clause, and the local FAR system number of the clause. Editorial changes to the local **clause may be made locally**. **A copy of the revised clause shall be forwarded to DLSC-PPP** to update the DLAD. Any significant revision to the clause must be treated as a new deviation in accordance with 1.490.

(d) Clauses developed for local use are to be numbered in accordance with DFARS 252.101. Each activity's clauses are to be identified with a nine in the sixth position denoting an Agency or component clause and an alpha symbol in the seventh position. The alpha symbol for each activity is identified as follows:

DSCC - 9C00	DASC -- 9A00	
DSCP - 9P00, 9I00	DDC - 9W00	DESC - 9F00
DRMS - 9R00	DNSC - 9N00	DSCR - 9G00

(e) One-time use clauses do not have to be numbered, but must be identified in accordance with FAR 52.103 by title, date, and name of organization that developed them.

(f) DLA clauses codified in the Code of Federal Regulations are to be numbered using the prefix of 54.

1.304 Agency control and compliance procedures.

(4) The plan required by DFARS 201.304(4) is comprised of 1.301-91, 1.403 and 1.404, as well as this section.

(90) The Defense Supply Centers and DRMS are precluded from adopting any new, or continuing to use any old, clause or provision, including any quality assurance provision or other contractual requirements language, that includes any nonstatutory certification without prior review and approval by the Director, Defense Procurement. Any local certification requirement considered to be mandated by statute that is currently in use or proposed for use must be submitted to HQ DLA, attn: **DLSC-PPP**, for forwarding to DDP.

1.390 DLAD.

(a) Contents. This directive contains all Departmental policies, procedures, and instructions relating to acquisition of supplies and services within DLA, except those contained in the FAR, DFARS, DLA manuals, DLA handbooks, or other DLA regulations.

(b) Procurement letters. Numbered procurement letters (PROCLTRs) are issued by the Executive Director, Procurement Management, to provide information and procedural guidance to DLA contracting personnel, to emphasize existing policy, or to transmit new or changed policy promulgated by OSD or higher authority. PROCLTRs shall expire no later than 1 year from date of issue. **PROCLTRs can be accessed and downloaded from the Internet via the DLSC-PPP website: <http://www.procregs.hq.dla.mil>, for distribution** to DLA contracting offices and within Headquarters, DLA. The PROCLTR Distribution List is maintained by **DLSC-PPP**.

(c) Multiple address letters. Unnumbered multiple address letters will be issued for one-time requests for comments or reports, announcements of procurement conferences and other meetings. No implementation beyond the action requested is contemplated.

SUBPART 1.4 - DEVIATIONS FROM THE FAR

1.403 Individual deviations.

(a) Except for individual deviations to the coverage listed in DFARS 201.402(1)(i), deviations from FAR, DFARS, a Department of Defense Directive, or the DLAD which affect only one contract or transaction, may be made only after approval by the Executive Director, Procurement Management.

(b) Requests for deviations to the coverage listed in DFARS 201.402(1)(i) (A) through (E) shall be submitted to HQ DLA, ATTN: **DLSC-PPP**, for submission by the Executive Director, Procurement Management, to the DAR Council Director for approval by the Director, Defense Procurement.

1.404 Class deviations.

(a) Requests for class deviations shall be submitted to HQ DLA, ATTN: **DLSC-PPP**, for submission to the Executive Director, Procurement Management, for approval, or to the DAR Council Director for approval by the Director, Defense Procurement.

(b) Title 10 U.S.C. 2404(a) and (b) provide special authority to the Secretary of Defense for deviation from contractual requirements when petroleum market conditions are expected to adversely affect or have already adversely affected DoD's ability to acquire petroleum products. DoDI 4220.8, Petroleum Acquisition Under Title 10, U.S.C., Section 2404 and DLAD 4220.5, Petroleum Acquisition Under Title 10, U.S.C., Section 2404 provide specific procedures for use of this authority.

(90) All class deviations for the FAR, DFARS, and DLAD which are required for longer than three years will be incorporated in the DLAD.

1.490 Submission of requests for deviations.

(a) Requests for authority to deviate from the provisions of the FAR or the DFARS shall be submitted to HQ DLA, ATTN: **DLSC-PPP**. Submittals shall be formatted in accordance with the guidance at 90.702. Requests for authority to deviate from the provisions of the DLAD shall be submitted in the form of a letter signed by the chief of the contracting office and be in the format of I. Problem, II. Recommendation, and III. Discussion. The deviation request shall include a statement that the request has been reviewed and concurred in by local counsel. Pertinent comments by local counsel should be forwarded with the request.

(i) Requests for new deviations which will be needed beyond the normal three year expiration period should be submitted to HQ DLA, ATTN: **DLSC-PPP**, as permanent deviations to be incorporated into the DLAD. The deviation request shall also include appropriate DLAD language.

(ii) Requests for extension of existing deviations should also be requested as permanent DLAD coverage unless superseding regulatory changes are in process.

(b) Requests for class deviations which have a significant cost or administrative impact upon contractors or offerors must be published in the Federal Register. See 1.501-2.

(i) Class deviations for which publication is required should be submitted to **DLSC-PPP** in sufficient time to allow for a 60 day public comment period, resolution of public comments, review of the resolved comments by the DAR Council and approval by the Director, Defense Procurement.

(ii) If a paperwork reduction or regulatory flexibility analysis is required, additional time should be allowed for these analyses.

(c) For those class deviations which have originated in a DLA field activity and do not have significant cost or administrative impact upon contractors or offerors, the originator will initiate action for renewal or extension, when appropriate, at least 90 days prior to the expiration date.

1.491 Control of deviations.

A register shall be maintained by **DLSC-PPP** of the deviations granted to the FAR, DFARS, and DLAD. Each deviation shall be recorded in the register and shall be assigned a control number (i.e., FARS DEV (FAR system deviation) YY-##)). The control number shall be included in the document authorizing the deviation and shall be cited in all references to the deviation.

1.492 - Streamlined Solicitation for **Defense Energy Support Center** Contracts (DEVIATION)

Defense Energy Support Center (DESC) is authorized to either eliminate or modify various clauses and provisions in buying petroleum, petroleum-related services, and coal. FAR and DFARS clauses/provisions eliminated or modified and DESC clauses which have been modified are listed at 90.13.

1.493 National Performance Review (NPR) Reinvention Laboratory Deviation Authority.

(a) Contracting activities which have been designated as Reinvention Laboratories may grant individual or class deviations to the FAR, DFARS, or DLAD, where necessary to accomplish reinvention laboratory initiatives. This authority may be delegated by the HCA, without power of redelegation, to the chief of the contracting office. The Executive Director, Procurement Management has delegated this authority to the Commander of the Defense Reutilization and Marketing Service (DRMS) and the Administrator of the Defense National Stockpile Center (DNSC) without power of redelegation.

(b) This deviation authority does not apply to:

(i) Deviations which have a significant effect beyond internal operating procedures or; those which have a significant cost or administrative impact on contractors or offerors (see FAR 1.501).

(ii) Individual deviations at DFARS 201.402(1)(i) which require Director, Defense Procurement approval.

(iii) Requirements imposed by statute or that implement regulations or directives of other agencies.

(c) Reporting Requirement. A report covering all deviations exercised as a result of the Reinvention Laboratories initiative shall be forwarded to **DLSC-PPP** 15 days after the end of each calendar quarter. Reports shall contain a brief description of any deviation exercised as a result of this authority including the FAR, DFARS, or DLAD citation, the action or class to which the deviation applies, and the goal which the deviation supports. The Executive Director Procurement Management, will consolidate and submit to the Director, Defense Procurement a quarterly report with a brief description of all deviations exercised in the last quarter.

SUBPART 1.5 - AGENCY AND PUBLIC PARTICIPATION

1.501 Solicitation of agency and public views.

1.501-2 Opportunity for public comments.

(b)(2) Contracting office comments on proposed rules published for public comment in the Federal Register shall be submitted to HQ DLA, ATTN: **DLSC-PPP**. **DLSC-PPP** will take appropriate action on such comments. Actions may include consideration in DAR Council Committee, submission to the DLA DAR Council Policy Member for resolution at the DAR Council, or consolidation of comments and submission directly to the FAR Secretariat or the DAR Council case manager.

(90) **DLSC-PPP** will be the focal point for any Federal Register notices of proposed rules submitted by contracting offices requiring the public comment process. The appropriate contracting office will be responsible for the analysis of public comments and the preparation of a final rule. The final rule will be submitted to **DLSC-PPP** for review and submission through the DAR Council to the Director, Defense Procurement.

1.590 Changes in contracting processes, techniques, or methods.

(a) General. Whenever a contracting office contemplates a significant change in a contracting process, technique, or method which may have a substantial impact on industry and/or the Government, the activity shall promptly notify HQ DLA, ATTN: **DLSC-PPP**, of the contemplated change and the reasons for the change. This notification is necessary for HQ DLA to respond to any reactions from industry, the Congress, or the using Military Departments. In addition, HQ DLA has information which may not be available at the field level and can evaluate the significance of the proposed action to the Agency as a whole. Accordingly, it is essential that HQ DLA know what is contemplated before a significant change is publicized.

(b) Examples of significant changes. Examples of contemplated changes which are significant and which require notification to HQ DLA are (but not limited to) a change in--

- (1) A longstanding inspection requirement or procedure;
- (2) The method of providing and/or accounting for Government-provided property;
- (3) A type of contract which constitutes a significant departure from the acquisition technique previously utilized;
- (4) Solicitation techniques and the elements used in evaluation of offers;
- (5) The region/area from which acquisition of an item has been previously accomplished;
- (6) The location of a contracting office; or
- (7) Item specification which prompts a major change in manufacturing and/or processing techniques.

(c) Data to support request. To determine the impact of a contemplated change in contracting method, requests for approval of a proposed change in a contracting method should contain the following information:

- (1) A description of the present and proposed contracting methods;

(2) A statement of the difficulties encountered in the use of the present method and/or the improvements foreseen as the result of a change;

(3) A statement as to the degree of impact of the change expected on industry and/or the Government; and

(4) A statement as to the net benefits accruing to the Government as a result of the change.

SUBPART 1.6 - CONTRACTING AUTHORITY AND RESPONSIBILITIES

1.601 General.

Authority conferred upon the Heads of contracting activities, Commanders of contracting offices or the chief of the contracting office under any paragraph of DLAD may be delegated with power of redelegation to other officials, except when specifically limited by law or the provisions of the pertinent DLAD paragraph. The chief of the contracting office will maintain a list of all delegations and promptly notify HQ, DLA, ATTN: **DLSC-PPP**, of any changes.

1.601-90 Center Senior Procurement Official

(a) In order to minimize the risk attendant to the integration of the contracting function into multifunctional teams at the Inventory Control Points (ICPs), each Head of Contracting Activity (HCA) shall establish within the activity a position of Center Senior Procurement Official (CSPO). The CSPO shall be a strong, functionally independent procurement official. The position shall be a critical acquisition position at the civilian GM-15 or military O-6 level, and shall be filled by an individual who is certified at level III in the contracting career path under the Defense Acquisition Workforce Improvement Act (DAWIA). The CSPO shall be the "Chief of the Contracting Office" as defined in subpart 2.1.

(b) Responsibilities. The CSPO shall maintain oversight of the activity's procurement function and ensure the fundamental integrity of the activity's procurement system for and on behalf of the HCA. To accomplish this, the CSPO shall:

(1) Have responsibility for the contract policy, pricing, and clearance and oversight functions.

(2) Serve as the Defense Supply Center's clearance authority (see 1.690-3(a)).

(3) Ensure that a review and approval channel consisting of DAWIA certified or certifiable GS-1102s or GS-1101s in the contracting career path, matrixed if necessary, is in place to provide review and approval of contracting actions specified by regulation. This review and approval channel shall also assist in the resolution of complex contracting issues that are elevated by contracting officers.

(4) Select, appoint, and terminate the appointment of contracting officers when such authority has been delegated to the chief of the contracting office in accordance with 1.603-1.

(5) Manage the activity's Contracting Officer Warrant Program (see 1.603-1(91)). The objective of this program is to ensure that only those officials who fully meet appropriate selection criteria are appointed and retained as contracting officers when an organizational need occurs.

(6) Manage the activity's Contracting Officer Review Program (see 1.603-91).

(7) Ensure, on behalf of the HCA, that contracting officer annual performance evaluations are performed, reviewed or approved within their own career channels. The requirement that annual performance evaluations be performed, reviewed or approved by contracting career path 1101 or 1102 personnel is set forth in Under Secretary of Defense for Acquisition and Technology's letter dated June 2, 1993, subject: Functional Independence of Contracting Officers (popularly called "the Deutch memo"), forwarded to field activities by AQLB letter, dated July 14, 1993, same subject.

(8) Ensure that contracting personnel, including those in developmental programs, obtain the mandatory training, education, and experience required by DoD 5000.52M to become certified at the appropriate levels.

(9) Assure that Defense Acquisition University (DAU) course quotas are requested in sufficient numbers to meet training requirements and that these quotas are used or returned in time for the Army Training Requirements and Resources System (ATRRS) to reallocate the spaces.

(10) Together with the HCA and the Center's Civilian Personnel Office, designate critical acquisition positions within the activity.

(11) Ensure waiver requests are processed through the HCA to the Agency's Acquisition Career Program Board (ACPB) in accordance with CAH letter dated November 10, 1994, subject: Waiver of Requirement to be a Member of the Defense Acquisition Corps. This letter states that "only persons who are members of the acquisition corps may serve in critical acquisition positions unless a waiver is obtained." The letter also provides the general criteria for a waiver request, i.e., "significant potential for advancement to levels of greater responsibility and authority -- based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience."

(12) Be the program manager for the activity's program of development for first line supervisors of multi-functional teams. The policy for this program is specified in AQP/MMS letter dated July 14, 1994, subject: Supervisory Development Programs in Commodity Business Units, Commodity Management Groups, and Like Organizations. Paragraph 5.d. of this letter establishes the requirement that "an employee residing at a senior contracting career level should be designated as program manager" for the Center's program for the development of first line supervisors of multi-functional organizations. This does not preclude the participation of personnel from other disciplines in this program.

(13) Develop a Contract Quality Management Plan that describes how integrity is preserved within the contracting function (see 1.601-91).

1.601-91 Contract Quality Management Plan.

(a) Each HCA shall be responsible for a Contract Quality Management Plan (CQMP). The purpose of the plan is to assure that each HCA has in place an effective management control plan for assuring contracting system controls and integrity and for continuous improvement of contract quality in all phases of the procurement process. The CSPO (see 1.601-90) shall develop the plan for and on behalf of the HCA.

(b) The CQMP shall address the following elements:

(1) A description of the procedures in place assuring that the CSPO has been assigned responsibility for the contract policy, pricing, and clearance and oversight functions (see 1.601-90(b)(1)).

(2) A description of how continuous contract quality improvement will be achieved utilizing the eight contract clearance standards at 1.690-4.

(3) A description of the contracting review and approval channel within the activity. This review and approval channel shall consist of DAWIA certified or certifiable GS-1102s or 1101s in the contracting career path.

(4) A description of the activity's Contracting Officer Warrant Program (see 1.603-1(91)).

(5) A description of the activity's Contracting Officer Review Program (see 1.603-91).

(6) A description of how the activity complies with the requirement in the Under Secretary of Defense for Acquisition and Technology's memorandum of July 14, 1993, subject: Functional Independence of Contracting Officers, that requires contracting officer annual performance evaluations be performed, reviewed or approved by contracting career path 1101's or 1102's. The requirements of this memorandum may be satisfied at the appraising supervisor level, the reviewing supervisor level, or the approving official level.

(7) A description of how the CSPO ensures that activity contracting personnel, including those in a developmental program, attend mandatory DAWIA training courses and that they obtain the required education and experience.

(8) A description of how the activity's DAWIA certification process is managed.

(9) A description of how the activity's critical acquisition positions are determined and the procedures for processing a waiver request.

(10) A description of how the activity's program for developing a pool of talent for filling multi-functional supervisory vacancies is managed (see AQP/MMS letter dated July 14, 1994, subject: Supervisory Development Programs in Commodity Business Units, Commodity Management Groups, and Like Organizations).

(c) The CQMP and substantial revisions thereto shall be submitted by the HCA for approval by the Executive Director, Procurement Management. The plan shall be kept current.

1.602 Contracting officers.

1.602-1 Authority.

(a) Each appointing authority shall prepare and maintain a current listing of all of the activity's contracting officers and the limits of their authority. This list shall also include the name and location of any contracting officer assigned to an activity but physically located at other than the central activity. The listing shall be in the sample format at (b) below. A copy of this listing will be provided to HQ DLA, ATTN: **DLSC-PPP**, annually at the beginning of each fiscal year.

(b) Sample format for listing of contracting officers:

NAME	GRADE	DATE OF CURRENT WARRANT	DOLLAR LEVEL	CANDIDATE SELECTION (Yes or No)	MEETS CRITERIA	INTERIM APPOINTMENT (Yes or No)
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(c) Contracting officer warrants lists shall be reviewed by DLSC-PPP. The review will include the following considerations: a contracting office's needs for the number and dollar values of warrants relative to the office's size and mission; whether warrants should be limited or unlimited; whether warrants are rescinded when appropriate; whether contracting officers meet the FAR/DFARS/DLAD selection criteria; the number and duration of waivers to selection criteria; and whether a periodic review of contracting officers warrants by the contracting office has been accomplished.

1.602-2 Responsibilities.

(90) Contracting officers shall be bound in all their actions to exercise reasonable care, skill, and judgment.

1.602-3 Ratification of unauthorized commitments.

(b) Policy.

(3) Heads of contracting activities may delegate their ratification authority (FAR 1.602-3(b)(2)) for unauthorized commitments valued at or below the simplified acquisition threshold at FAR 13.101 to the Chief of the Contracting Office. The authority to ratify unauthorized commitments in excess of the simplified acquisition threshold may not be delegated. The Executive Director Procurement Management, has delegated the authority to ratify unauthorized commitments valued at or below the simplified acquisition threshold at FAR 13.101 to the Commander of the activities listed in (A) through (D) below, and to the **Director, DAPS, the Headquarters Complex Commandant for DASC, and the Administrator, DNSC, (respectively)** without power of redelegation:

(A) Defense Contract Management Districts (DCMDs) and Defense Contract Management **District** International (DCMDI).

(B) Defense Distribution Center (DDC).

(C) Defense Reutilization and Marketing Service (DRMS).

(D) Television - Audio Support Activity (T-ASA).

(E) *DLA Administrative Support Center (DASC).*

(F) *Document Automation and Production Service (DAPS)*

(G) Defense National Stockpile Center (DNSC)

(4) Proposed ratification of unauthorized commitments valued in excess of the simplified acquisition threshold at FAR 13.101 from those activities in (A) through (G) above shall be forwarded by letter signed by the Commander, **Director, Headquarters Complex Commandant**, or the Administrator, to HQ DLA, ATTN: **DLSC-PPP**. Such referrals shall clearly document: (A) that the authority of FAR 1.602-3 exists and that ratification is within the limitations of FAR 1.602-3(c); (B) the circumstances surrounding the unauthorized commitment; and (C), as appropriate, a description of the corrective action taken to preclude such unauthorized commitments in the future.

1.602-90 Nonappropriated funds.

Appropriated fund contracting officers may act in an advisory capacity on nonappropriated fund contractual instruments. Appropriated fund contracting officers, however, shall not perform the duties of a contracting officer on any contractual instrument obligating only nonappropriated funds except when required by AR 215-4, Nonappropriated Fund Contracting. Contracting officers shall be separately warranted for contracting with nonappropriated funds.

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

The authority in FAR 1.603-1 for selection, appointment, and termination of appointment of contracting officers has been delegated by the Director, DLA to the DLA Heads of Contracting Activities (HCAs). This authority is delegable, without power of redelegation, at the DSCs, to the chief of the contracting office without power of redelegation. For the activities not designated as contracting activities (see DLAD 2.101), the Executive Director, Procurement Management, as HCA, has delegated this authority, without power of redelegation; to the Commander of those activities and to the **Director, DAPS, the Headquarters Complex Commandant, DASC, and the Administrator, DNSC.**

(90) Definitions.

"Appointing Authority" means any person delegated the authority to appoint contracting officers in accordance with 1.603-1 above.

"Warrant Limitations" are limitations, in addition to the DLAD, laws, Executive Orders, and other applicable regulations, which are imposed on the authority of contracting officers either by delegation or actions of the appointment authority. These limitations may include, but are not limited to, dollar obligation ceilings, interim appointment period, requirements for prior reviews by higher authority, or other approval requirements.

(91) The DLA Contracting Officer Warrant Program.

(a) As prescribed in FAR 1.603-1, DLA has established the DLA Contracting Officer Warrant Program for the selection, appointment, and termination of contracting officer warrants.

(b) The objective of this program is to ensure that only those officials who fully meet appropriate selection criteria are appointed and retained as contracting officers when an organizational need occurs.

1.603-2 Selection.

(90) Selection criteria for contracting officer appointments are listed in DFARS 201.603-2. Education and training requirements for warrants above this threshold are also set forth in DoD 5000.52M, Acquisition Career Development Program (November 1995); see especially Appendix M. There are no specific education or training requirements for contracting officers, other than those pertaining to the candidate's series and grade level, for warrants for simplified acquisitions above the micropurchase threshold but under the simplified acquisition threshold.

(a) Experience requirements and selection procedures:

(1) Candidates for simplified acquisition contracting officer warrants above \$2,500 shall have two years of recent experience in Government or commercial contracting, including 6 months experience applicable to the dollar threshold or nature of procurement actions for which the warrant will be issued.

(2) For Contracting Officer Warrants above the simplified acquisition threshold, candidates shall meet the following additional experience requirements:

(i) Warrants for up to a maximum of \$500,000: Three years of recent, progressively complex and responsible contracting and/or staff experience in Government or commercial contracting.

(ii) Warrants which exceed \$500,000: Four years of recent, progressively complex and responsible contracting and/or staff experience in Government or commercial contracting.

(3) Field buyers and Defense Subsistence Office Personnel placing calls against Blanket Purchase Agreements for fresh fruits and vegetables may be exempt from the above requirements. Appointing authorities may establish specialized selection criteria as appropriate for these two categories of warranted personnel.

(4) At the request of the supervisor, the candidate will prepare a Contracting Officer Warrant Program Selection Statement using the following format:

SAMPLE CONTRACTING OFFICER WARRANT PROGRAM SELECTION STATEMENT.

This format should be used by each contracting officer candidate when applying for a contracting officer's warrant:

1. NAME
2. TITLE, SERIES, GRADE
3. OFFICE
4. RELEVANT EXPERIENCE (Begin with current position and go back for a minimum of two years. Include up to four relevant positions.) Information on each position should include:

- A. NAME OF EMPLOYER
- B. DATES EMPLOYED
- C. TITLE OF POSITION
- D. KIND OF BUSINESS/ORGANIZATION
- E. DESCRIPTION OF WORK (Include quantity, complexity, type, and average dollar amount of documents obligated, if applicable.)

5. OTHER RELEVANT SPECIAL QUALIFICATIONS, CERTIFICATIONS, OR SKILLS
6. RELEVANT HONORS, AWARDS OR FELLOWSHIPS RECEIVED
7. EDUCATION:

- A. HIGHEST LEVEL COMPLETED
DIPLOMA RECEIVED: () YES () NO
- B. NAME OF COLLEGE/UNIVERSITY
 - (1) DATES ATTENDED
 - (2) NUMBER OF CREDITS COMPLETED (Indicate whether credits are semester or quarter hours.)
 - (3) TYPE AND YEAR OF DEGREE
 - (4) CHIEF UNDERGRADUATE COLLEGE SUBJECTS
 - (5) MAJOR FIELD OF STUDY AT HIGHEST LEVEL OF COLLEGE WORK

8. CONTRACTING RELATED TRAINING (See 1.603-2 for training requirements):

NAME OF COURSE ATTENDED	NAME OF SCHOOL	DATE
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(5) The supervisor will review this statement to determine the candidate's ability to perform the functions required to meet the organizational need.

1.603-3 Appointment.

(a) Request for Appointment.

(1) The supervisor will complete a Request for Appointment of a Contracting Officer (such as the sample below), justifying the validity of the organizational need and verifying the contracting officer candidate's compliance with selection criteria. The supervisor will sign the request and submit it through appropriate organizational channels to the appointing authority.

SAMPLE REQUEST FOR APPOINTMENT OF A CONTRACTING OFFICER.

The following findings and determinations are made pursuant to applicable law and regulation.

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the _____ (dollar threshold) warrant level for the following reasons: (Include discussion of quantity, complexity, type, and average dollar amount of documents to be obligated).

2. Request the following contracting officer candidate be appointed a warrant with the above dollar limitation: (Name, Title, Series and Grade).

3. The contracting officer candidate will occupy the following organizational level: (Office/Branch/Division).

4. The candidate's Contracting Officer Warrant Program Selection Statement stating the candidate's background is enclosed. For the limits set forth above: (Check as applicable.)

_____ The candidate meets the selection criteria.

_____ This candidate does not meet the minimum criteria in (experience, education and/or training), namely; (Indicate deficiency)_____

_____ An interim appointment for the period of _____is requested because_____

(Include rationale/justification needed to issue warrant despite failure to meet qualification criteria.) These experience and/or training needs will be identified in the candidate's individual development plan and must be completed by_____.

5. In addition to the limitations imposed by the Defense Logistics Acquisition Directive, the DoD FAR Supplement, the FAR, laws, Executive Orders, and other applicable regulations, the following additional warrant limitations are imposed:

Dollar threshold:_____

Other limitations:_____

6. The candidate's current conflict of interest disclosure statement, OGE Form 450, "Executive Branch Confidential Financial Disclosure Report", as required by DLAD 5500.1, Standards of Conduct, is on file with the appropriate standards of conduct counselor. The above findings and determinations are made pursuant to applicable law and regulations:

SUPERVISOR:

.....
(Signature of Supervisor of the Candidate/Date)
(Typed Name, Title, Office)

APPROVED:
(Appointing Authority/Date)
(Typed Name, Title, Office)

(2) The appointing authority will review candidate applications and appoint Contracting Officers. If additional information is required by the appointing authority, the document will be returned with a request for further explanation or supporting data. The appointing authority shall determine the validity of the need, whether the candidate meets applicable selection criteria, and what warrant limitations should be applied. In the event that the appointing authority determines that there is not an organizational need for a contracting officer, the candidate will be notified of this decision.

(3) The appointing authority may have the candidate appear before a Contracting Officer Review Board as described in 1.603-92(b).

(4) The completed Request for Appointment of a Contracting Officer is subject to the Privacy Act of 1976 and shall be maintained in a secure location deemed appropriate by the appointing authority.

(5) Personnel shall not ordinarily be appointed as contracting officers if they do not meet the applicable selection criteria (see DFARS 201.603-2). If a candidate does not meet the selection criteria, an interim appointment may be granted. The appointing authority shall consider experience and past performance when making an interim appointment. Interim appointments shall normally be limited to dollar obligations at or below the simplified acquisition threshold in FAR Part 13. The appointing authority will require that all training or experience requirements will be met within 18 months. Failure to successfully fulfill the training requirements within that timeframe will result in loss of the warrant or issuance of another interim warrant, whichever is deemed necessary. If no appointment is granted, the candidate will be provided with a written explanation of the reasons.

(6) Appointments will be documented and copies filed as prescribed at FAR 1.603-3. Each SF 1402, Certificate of Appointment, shall be serially numbered by each DLA appointing authority. The SF 1402 will contain any warrant limitations, including limitations on the period of appointment. The original Certificate of Appointment shall be provided to the appointed contracting officer and retained at the contracting officer's duty station.

(7) Changes, either increasing or decreasing the warrant limitations of a contracting officer, shall be made solely at the discretion of the appointing authority. When an appointing authority determines to make such changes, a new Certificate of Appointment shall be issued based upon an updated selection statement and request for appointment.

(b) Pursuant to DFARS 201.603-3(b), Heads of Contracting Activities, or their authorized designees, acting in their capacity as purchase card authorizing officials as delineated in DLA I 4105.3, may authorize cardholders to use the purchase card in accordance with the criteria at DFARS 213.301. Cardholder appointment letters shall reflect the appropriate single purchase limit threshold.

1.603-90 Ordering Officers.

Contracting Officers, by virtue of their warrant, are authorized to designate qualified individuals as ordering officers. Such designations must be in writing. Limitations on the authority of the ordering officer shall be stated in the contract or in the letter of appointment. Ordering officers may place orders under contracts such as indefinite delivery contracts or Federal Supply Schedules and calls under blanket purchase agreements. Contracting officers shall assure that ordering officers are familiar with DoD contract reporting requirements and shall comply with the DoD contract reporting requirements for such actions.

1.603-91 Micro-purchase contracting authority.

(a) Individuals authorized to make micro-purchases shall be so designated, in writing, and, except for individuals authorized to only make such purchases with the government commercial purchase card, are required to complete the Defense Small Purchase Course.

(b) Issuance of a government-wide commercial purchase card constitutes authority to make micro-purchases (see FAR 1.603-3(b)). This procurement authority is issued under the procedures of the DLA Credit Card Instruction, DLA I 4105.3 and is not subject to the limitation on delegation of authority for selection, appointment, or termination at 1.603-1 or the contracting officer review program at 1.603-92.

1.603-92 Contracting Officer Review Program.

(a) Each appointing authority will establish a Contracting Officer Warrant Review Program consisting of the following:

(1) An annual assessment of the organizational need for Contracting Officer appointments.

(2) Appointment of a Contracting Officer Review Board to accomplish the following:

(i) Review and approve initial Contracting Officer appointment procedures.

(ii) Once every three years conduct reviews of each Contracting Officer appointment as described below:

(A) An evaluation of the contracting officer's work products to include a cumulative assessment of the results of preaward and postaward reviews of contract actions by the activity contract review personnel.

(B) An examination of the contracting officer's Individual Development Plan to include completion of mandatory training courses for the level of warrant held, on-the-job training, and required college degree or 24 semester hours of business related study, unless exempted based upon criteria set forth in DFARS 201.603-2(2).

(C) A review of the contracting officer's professional competency which may include an appearance before the Contracting Officer Review Board to demonstrate that the contracting officer possesses the required knowledge of contracting officer authority and responsibility, the role of a contracting officer, activity/agency contracting procedures, decision making skills, and ethics.

(iii) Place written documentation of the results of the triannual review in the contracting officer's appointment file.

(b) The Contracting Officer Review Board will be composed of PLFA contracting personnel who have held contracting officer warrants from the following offices (or equivalent): Director or Deputy Director of Contracting, Plans, Policy and Systems Office, Business Review Office, and a senior contracting officer from a contracting team. Board results will be recorded and placed in the appointment file.

1.603-93 Selection, appointment, evaluation, and termination of appointment of contracting officers' representatives, and contracting officers' technical representatives.

(a) Designation and training. The selection, appointment, evaluation, and termination of appointment of contracting officers' representatives (CORs) and contracting officers' technical representatives (COTRs) shall be made by the contracting officer. Such appointments shall take into consideration the ability, training, and experience of COR/COTR designees and shall assure that designees are appropriately qualified to act as authorized representatives of the contracting officer. All CORs/COTRs should complete a computer based training course or equivalent prior to being issued a letter of appointment (see DLAD 90.602-3). The COR/COTR designations shall be in writing and shall define the scope and limitations of the authorized representative's authority. Appointment shall be made by letter substantially in the form set forth in (d) below. Unless the appointment of a COR/COTR contains other provisions for automatic termination, the appointment shall be effective, unless sooner revoked, until the COR/COTR is reassigned or the individual's employment is terminated. Revocation of a COR/COTR appointment may be effected at any time by the appointment authority, or higher authority, or any successor to either. Revocation shall be made by letter substantially as shown in (e) below.

(b) Authority. CORs/COTRs are responsible to the contracting officer for those actions delegated by the contracting officer as specifically addressed in the letter of appointment. Compliance with DoD Directive 5500.7, Standards of Conduct, as implemented by DLAD 5500.1, Standards of Conduct, shall be maintained. Specific guidance for CORs/COTRs is provided in Subpart 90.6. Guidance concerning contracting officer's representatives for provisioning is addressed at 17.7690.

(c) Evaluation and Documentation. Supplementing the normal monitoring of the COR/COTR by the contracting officer, the contracting officer shall maintain an activity file on each COR/COTR as a part of the contract file. The purpose of this file is to record and maintain the results of reviews conducted annually by the contracting officer of the COR's/COTR's contract related activities. The contracting officer shall annually evaluate and document the performance of the COR/COTR and provide a copy of this evaluation to the COR's/COTR's organizational head. If the contract performance period is less than 1 year, this evaluation shall be conducted prior to contract closeout. The contents of the activity file shall include, but are not limited to:

(1) A copy of the COR's/COTR's letter of appointment.

(2) Examples of indepth reviews of the COR's/COTR's performance with appropriate identification of the work performed, as well as the formal COR/ COTR evaluation required by 1.603-93(c).

(3) Documentation by the contracting officer of the date, substance, and extent of the reviews conducted.

(d) Sample letter of appointment.

SUBJECT: Appointment as (Contracting Officer's Representative) (Contracting Officer's Technical Representative) for Contract Number _____.

TO: (Address to individual, indicating rank or grade, branch, division, activity, and location.)

1. Under the authority vested in me by my warrant dated _____, and pursuant to paragraph 1.603-93 of the Defense Logistics Acquisition Directive (DLAD 4105.1), you are hereby designated (contracting officer's representative)/(contracting officer's technical representative) with authority conferred by the contracting officer.

2. Areas of responsibility of the COR/COTR during contract performance may include (but are not all-inclusive) as follows:

a. Monitor the contractor's performance to assure compliance with technical requirements of the contract.

b. Review and approve progress and financial reports, and other items required for approval. Notify the contracting officer if reports or other items submitted are to be rejected.

c. Notify the contracting officer if performance is not proceeding satisfactorily or if problems are anticipated.

d. Advise the contractor to submit requests for changes in writing to the contracting officer, indicating the effect the change will have on the contract terms and conditions.

e. Assure that changes in work under a contract are not implemented before written authorization or a contract modification is issued by the contracting officer.

f. Keep the contracting officer informed of communication with the contractor in order to prevent possible misunderstandings or situations that could become a basis for future claims against the Government.

3. The scope of your authority is subject to the following limitations. You are not authorized to:

a. Alter the contract in any way, either directly or by implication.

b. Issue instructions to the contractor to stop or start work.

c. Order or accept goods or services not expressly required by the contract.

d. Render a decision under the Disputes clause.

e. Authorize delivery or disposition of Government property not authorized by the contract.

f. Discuss acquisition plans or provide any advance information that might give one contractor an advantage over another contractor in forthcoming procurements.

g. (Specify any other limitations on the COR's/COTR's authority.)

4. This letter of appointment shall be in full force and effect until revoked by me or my successor in the same manner as it is hereby granted, or upon your transfer from the (branch, division, activity, and location).

DATE

/S/CONTRACTING OFFICER

(e) Sample letter for terminating appointment.

SUBJECT: Termination of Appointment as (Contracting Officer's Representative) (Contracting Officer's Technical Representative) for Contract Number _____.

TO: (Address to individual, indicating rank or grade, branch, division, activity, and location.)

Your appointment as (Contracting Officer's Representative)/(Contracting Officer's Technical Representative) contained in letter of appointment dated _____ is hereby terminated effective _____.

DATE

/S/CONTRACTING OFFICER

1.690 Contract clearance and oversight process.

1.690-1 General.

(a) Scope and applicability. The requirements of this section apply to the Defense Supply Centers and contracting offices listed in DFARS 202.1 and 2.101 of this directive.

1.690-2 Policy.

(a) The Executive Director, Procurement Management, establishes and maintains the contracting clearance and oversight process as a system of internal controls and as a basis for certification of the procurement system required by Executive Order 12352.

(b) Heads of contracting activities are to provide an effective management system that assures the procurement system provides goods and services with reasonable prices, timely delivery, and required quality and that it meets the statutory, regulatory, and program needs of the Agency. A contract clearance and oversight process shall be instituted which provides oversight to monitor all phases of the procurement system. The clearance and oversight process is to ensure an effective program for monitoring, evaluating, documenting, and improving the quality of the procurement system's performance. Clearance procedures are to provide for contracting supervisory review of negotiated procurements as well as independent reviews. Contracts are to be reviewed at a level appropriate to their complexity, risk, priority, and dollar value. The clearance and oversight process will embrace five key concepts: strengthening PCO ownership of the procurement process, placing accountability and responsibility at the appropriate level, enhancing professional development, streamlining the review and approval process, and focusing on process improvements.

(c) The Contract Clearance and Oversight Office (formerly the Contract Review Office) at the Defense Supply Centers (see 2.101), organized in conformance with DLA 5810.1, is the focal point for contracting oversight. Review criteria are established by the chief of the contracting office. The establishment and/or subsequent revision of review criteria will be coordinated with the Executive Director, Procurement Management, prior to incorporation in local regulations. At all other DLA activities, the chief of the contracting office will be the focal point for oversight. For those activities with no review office, a contract review board process will be employed to review selected acquisitions.

(d) Contracting officers shall review every proposed contract (FAR 2.101) and supporting file before signing the contract and before forwarding the file for review by higher authority, if required. Documentation shall be in sufficient detail to permit reconstruction of all significant actions by a reviewer without referral to the individuals who effected the acquisition. The contracting officer is responsible for the quality of the contracting arrangement.

1.690-3 Establishment of clearance approval authority.

(a) Clearance authority at the Defense Supply Centers is established in the chief of the contracting office (see 2.101).

(b) The Executive Director, Procurement Management (and/or the Assistant Executive Director, Procurement Management (Policy and Oversight) or designee)) reserves the right to review and approve any action at any critical stage when called for. Selected acquisitions will be briefed by the contracting officer to the Executive Director, Procurement Management and the Assistant Executive Director, Procurement Management (Policy and Oversight) at HQ DLA, as directed. Documentation reviews will be prepared in accordance with 1.690-7.

(c) All proposed solicitations and contracts to be executed under the authority of FAR 6.302-3, (for *DSCP, C&P, Medical and Subsistence*, only those actions in excess of \$10,000,000) and all letter contract definitizations exceeding \$500,000 for the Defense

Supply Centers (for other contracting offices, see Table 1-1 and 1.690-6(g)), are subject to HQ DLA review and approval pursuant to 1.690-7.

1.690-4 Contract clearance standards.

In accordance with 1.690-2 the following standards will be employed in the operation of a clearance and oversight process:

- (a) Oversight is to focus on improvement in all phases of the contracting process.
- (b) Reviews will be random, based on risk, complexity, experience and quality considerations.
- (c) Procedures are to be in place to identify the need for review at any critical stage of an acquisition, including using solicitation, prenegotiation, preaward, and postaward reviews.
- (d) The oversight process is to identify problems early in the acquisition cycle.
- (e) Oversight is to be increased/decreased based upon proficiency, quality, and business considerations.
- (f) Line elements are to participate in developing initiatives/plans to assure contracting quality, accountability, and the integrity of the procurement system. The chief of the contracting office will determine the level of oversight required based on the soundness of the initiatives/plans, and shall monitor the contracting process through an established review process.
- (g) The clearance and oversight process requires a feedback system which provides timely information to all organizational levels. Feedback should address strengths, weaknesses, and significant findings, and provide techniques to ensure overall process improvement and accountability. Management is to determine the adequacy of initiatives taken to resolve quality issues identified through the feedback system.
- (h) All contracting officers shall have their procurements reviewed periodically under a system of process improvement and to enhance accountability.

1.690-5 Types of actions requiring contract clearance.

(a) The chief of the contracting office at each Defense Supply Center (see 2.101) shall establish criteria for the review and approval of the following actions pursuant to 1.690-2:

- (1) Other than fixed price;
- (2) Other than full and open competition;
- (3) Authorizing award of unpriced actions, and/or subsequent definitizations (see 1.690-3(c));
- (4) Advisory and assistance services;
- (5) Major programs;
- (6) Sole bids/offers;
- (7) ADP goods and services;
- (8) Awards to other than the low price;
- (9) High dollar acquisitions;
- (10) Simplified acquisitions;
- (11) Solicitations;
- (12) Negotiated actions;
- (13) Options not priced/evaluated at time of award;
- (14) Modifications;

(15) Unilateral price determinations.

(b) For activities where the Executive Director, Procurement Management exercises the function of head of the contracting activity, see table 1-1 and 1.690-6.

1.690-6 Contracts/actions requiring HQ DLA clearance.

(a) General. For those activities (Table 1-1) for which the Executive Director, Procurement Management is the head of the contracting activity (HCA), the actions listed below require the review and approval of the Executive Director, Procurement Management/Assistant Executive Director, Policy and Oversight, or other DLA official so delegated. Any action submitted, including those under 1.690-3(b) and (c), shall be accompanied by two copies of DLA Form 677, Request for Review and Approval of Contract/Solicitation Action, signed by the chief of the contracting office. For review purposes, the dollar amount of a contract action shall be either the proposed high objective, maximum estimated, or actual amount of obligation, and shall include the amount of any option whether or not evaluated or exercised at time of award. The amount of any subsequent set-aside quantities to be awarded should not be included in the total dollar value. Actions listed below will be selected pursuant to 1.690-3(b) and (c), and 1.690-7(a).

(b) Presolicitation. Review and approval prior to issuance (see 1.690-7(c)).

(1) Two step sealed bidding;

(2) Contractor versus Government performance (OMB Circular No. A-76, FAR 7.3);

(3) Acquisitions issued under authority of FAR 6.302-3, industrial mobilization; or engineering, developmental or research capability.

(c) Prenegotiation/sole bid. Review and approval prior to discussions. (See 1.690-7(d))

(1) All actions other than firm fixed-price or fixed-price with economic price adjustment.

(2) All actions resulting from an invitation for bids when award is proposed to a sole responsive, responsible bidder, and the total dollar amount exceeds that listed in Table 1-1 for the activity concerned.

(3) All actions, including priced orders issued under basic ordering agreements, resulting in receipt of a sole offer in response to a request for proposals in excess of the amount set forth in Table 1-1 for the activity concerned.

(4) All actions (excluding those covering the set-aside portion of a small business or labor surplus area set-aside) resulting in receipt of more than one offer in response to a request for proposal in excess of the amount set forth in Table 1-1 for the activity concerned.

(5) Each exercise of an option, when the option was not evaluated at time of award of the basic contract, in excess of the amount set forth in Table 1-1 for the activity concerned.

(6) Definitization of letter contracts or other undefinitized contractual actions approved in accordance with subparagraph (g) below.

(d) Preaward. During each fiscal year, each activity listed under Table 1-1 shall notify HQ DLA, **DLSC**-PPB of the first three construction contracts (FAR 36.102) which exceed the amount in Table 1-1 Construction Threshold which require preaward review and approval in accordance with the procedures at 1.690-7(a) and (g).

(e) Postaward. All DLA contracts are eligible for a postaward review by HQ DLA in accordance with the procedures at 1.690-7(g). The Chief, Business and Management Oversight Team (DLSC-PPB), may identify and request files subject to postaward review.

(f) Exclusions. Excluded from review are:

(1) Orders placed against requirements contracts of other DoD activities and other Federal agencies, orders placed against GSA schedule contracts, contracts with the

National Industries for the Blind and the National Industries for the Severely Handicapped.

(2) Contracts negotiated with the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act.

(3) Orders issued under indefinite delivery contracts or DLA multiple award schedules, where the basic contract was reviewed by HQ DLA, or where the basic contract was awarded under sealed bid procedures and the award was based on adequate price competition.

(4) Repurchases against any contract terminated for default.

(g) Letter contracts/other undefinitized contractual actions. Approval is required prior to award of a letter contract or other undefinitized contractual instrument when the resulting definitive contract is expected to exceed \$500,000, or the applicable criteria in Table 1-1 for the activity concerned, whichever is less. After review by the local clearance authority, the letter requesting approval shall be submitted to HQ DLA, ATTN: **DLSC-PPB**. A copy of any modification issued for an action previously approved in accordance with this subparagraph shall be forwarded to HQ DLA, ATTN: **DLSC-PPB**, when the modification affects the:

(1) Unit price or total price ceiling for the definitized action;

(2) Limit of the Government's liability;

(3) Definitization date; or

(4) Progress or provisional payments, as initially proposed. See 16.603-90 regarding procedural requirements for approval to award a letter contract or unpriced basic ordering agreement (BOA) order, respectively.

1.690-7 Notification, review and approval procedures.

(a) Notification. Written notification of the actions which are within three days of being forwarded for review pursuant to 1.690-3(b) and (c), and 1.690-6 should be provided to **DLSC-PPB** by facsimile transmission. The notification should identify the solicitation or contract number, type of contract, item or service, estimated value, number of offers received, the requirement for and/or exception from the requirement for certified cost or pricing data and the date the review package is to be transmitted to **DLSC-PPB**. **DLSC-PPB** will advise by telephone within one workday which of the identified actions are to be forwarded to **DLSC-PPB** for review. Prospective suppliers/contractors shall not be advised that potential awards are to be or have been forwarded to HQ DLA for contract clearance and oversight. Those actions not selected for review need not be forwarded, nor is the PNM required to be submitted unless called for on a postaward basis pursuant to 1.690-6(e).

(b) Local review. A local review is required (clearance and oversight office/review board pursuant to 1.690-2(c)) prior to submitting any contract action to HQ DLA for review and approval. A copy of the review results and the contracting officer's disposition of issues shall be a part of the file package sent to **DLSC-PPB**.

(c) Presolicitation. Actions requiring HQ DLA presolicitation review and approval under 1.690-3(c) and 1.690-6 shall be submitted to **DLSC-PPB** solicitation release date. Documentation shall include, as a minimum, copies of the solicitation and all amendments, the source selection plan, evaluation factors, evaluation standards, and acquisition plan. Files are to be forwarded using DLA Form 677.

(d) Prenegotiation, sole bid/offer and options.

(1) Review and approval of sole bids and options under 1.690-6 requires submission of DLA Form 677 and duplicate originals of documentation supporting the contracting officer's determination pursuant to 14.408-2 or 17.207 to **DLSC-PPB**.

(2) Review and approval of prenegotiation briefing memoranda (PBM) under 1.690-3(c) and 1.690-6 requires submission of DLA Forms 677, the documents (duplicate originals) to be sent to **DLSC-PPB**.

(i) Copy of the complete solicitation and all amendments. These may be mailed in advance of the actual request for review, and should be identified to the review package to follow.

(ii) Copy of any cost/price element reports, including all field pricing support reports (FAR **15.404-2(b)**) and supplements.

(iii) If cost or pricing data are submitted and cost/price realism or cost analysis is performed, a comparative schedule, by cost element, showing:

(A) The proposed costs and profit;

(B) Audit recommended costs;

(C) Administrative Contracting Officer (ACO) pricing report recommended position;

(D) Activity cost/price element position;

(E) Weighted guidelines profit analysis calculations with cost of money calculations and form, if applicable;

(F) The contracting officer's established objectives;

(G) Reference notes to the PBM and/or pricing report sections which support elements of cost and profit/fee for each objective.

(iv) If offers are received from two or more offerors and award is to be effected as a result of receipt of adequate price competition the PBM shall contain:

(A) The contracting officer's determination and supporting information as to why acceptance of the initial offer is in the best interest of the Government, considering the potential for price reduction, or other considerations, if discussions were conducted, or;

(B) If discussions are to be conducted, the contracting officer's rationale for establishing the competitive range, the offered prices, and the expected benefits and objectives to be achieved at the conclusion of discussions.

(v) If the offered price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, provide:

(A) The offeror's documentation (request for exemption from submission of cost or pricing data, copies of catalog pages, price lists or posted prices, etc.) supporting exemption.

(B) A statement in the PBM regarding the contracting officer's verification of the data, and rationale for granting the exemption.

(C) The contracting officer's price analysis documentation supporting price reasonableness, including any field pricing reports, as cited in subparagraph (d)(2)(ii) above.

(vi) Other documentation as may be necessary and called for by **DLSC-PPB** to complete the review.

(e) Previous reviews. If an action was previously reviewed by **DLSC-PPB** pursuant to 1.690-3 or 1.690-6(b) or other HQ DLA element such as that required by 7.104-90, Acquisition Planning Executive Council (APEC), the PBM shall document compliance with any review comments or conditions issued as part of the previous review.

(f) Significant changes.

(1) Significant changes to the Government objectives submitted in accordance with 1.690-6(c)(4) (receipt of more than one offer) will not **require further approval by HQ DLA**. However, significant changes to all other approved objectives will require price negotiation memorandum (PNM) preaward approval by HQ DLA. Significant changes are defined as those which exceed the maximum price objective reviewed by HQ DLA by 10 percent or \$50,000, whichever is less, or those which meet the provisions of FAR 15.606(b)(4) and (c)(changed requirements). A significant change also includes the situation where competition was initially received, but a sole offer ultimately resulted. For all other actions subject to HQ DLA approval in accordance with 1.690-6(c) a copy of the PNM and all addenda shall be submitted to DLSC-PPB within 30 calendar days after

completion of discussions. The contracting officer's compliance with previous headquarters conditions shall accompany or be documented in the PNM.

(2) Contract actions meeting the approved PBM objectives do not require further HQ DLA review or approval prior to award, unless otherwise directed on a specific action, or as required by subparagraph (f)(1) above.

(g) Preaward and postaward review. Unless otherwise directed, a complete contract file (including item/service specification or description) shall be submitted for those subject to review and approval in accordance with 1.690-6(d) and (e). Files shall be forwarded using DLA Form 677. Files shall be tabbed, assembled, and listed in accordance with DLA Form 678, Contract File Content List. A HQ DLA retain file shall be forwarded to include copies of all documentation contained at tabs: 3, 4, 5, 14, 20, 21, 22, 23, 24, 25, 29, 39, and 43 of the DLA Form 678, Contract Contents File Checklist.

1.690-8 Waiver of HQ DLA Review

(a) If extraordinary circumstances require immediate award of any contract action under this subpart, the chief of the contracting office may request a waiver of HQ DLA review and approval subsequent to selection under 1.690-7(a). DLA Form 1694, Request for Waiver of Preaward Contract Review and Approval, shall be transmitted to DLSC-PPB. Granting a waiver does not constitute approval of the action or any deviations from applicable laws and regulations.

TABLE 1-1

Contract Review Thresholds

Amounts set forth below are the thresholds for the activity listed under the applicable subparagraphs of DLAD 1.690-6.

ACTIVITY:	DCMDs/ DASC-C	DDC	DRMS	DNSC	DCMDI	AFIS/T-ASA
Sole Bid:	\$100,000	\$200,000	\$100,000	\$100,000	\$100,000	\$1,000,000
Sole Offer:	\$2,000,000	\$200,000	\$500,000	\$500,000	\$100,000	\$1,000,000
All Other						
Negotiated:	\$3,000,000	\$200,000	\$5,000,000	\$1,000,000	\$100,000	\$1,000,000
Options:	\$3,000,000	\$200,000	\$5,000,000	\$1,000,000	\$100,000	\$1,000,000
Construction:	\$300,000	\$300,000	\$300,000	\$300,000	\$100,000	\$1,000,000

1.691 Legal review.

(a) Legal advice and assistance of assigned legal counsel shall be obtained: in the preparation of clauses other than standard clauses which are to be contained in solicitations; prior to taking action to resolve any instance of defective cost or pricing data or false claim reported by the General Accounting Office (GAO), Department of Defense, Inspector General (DoD IG), or Defense Contract Audit Agency (DCAA); and on any questionable legal areas in the preparation and/or execution of contractual documents.

(b) Contracting activities within the DLA shall issue instructions on the legal review of solicitations and contractual documents issued by their activities.

(c) Those contracting offices listed at 2.101 shall ensure that legal review is accomplished on all solicitations and contractual documents in excess of \$100,000.

1.692 Confirmation of quantity and technical requirements.

(a) Prior to solicitation of repetitively single/sole source purchases in excess of \$100,000, the contracting officer shall consider requesting review of all technical data by the responsible Specification Preparing Activity/Engineering Support Activity. Such a review should be requested if the contracting officer believes it is necessary in order to assure that the data is current, potential sources are identified, and lengthy, complex, or expensive testing requirements are eliminated to the extent practicable

(i.e., qualified products list (QPL), First Article requirements). The contracting officer shall also ensure that consideration has been given to other actions that may encourage competition, i.e., Government furnished tooling, alternate contract type, provisions for economical production quantities.

(b) Immediately prior to the award of any supply contract (other than an indefinite delivery contract) in excess of \$500,000 or for mobilization requirements, the contracting officer shall confirm that the quantities are still required and that the technical requirements are still current. "Immediately prior to award" means that point in time when all required approvals have been obtained and the contract is ready for release to the contractor. Confirmation of quantity and technical requirements for Military Interdepartmental Purchase Requests (MIPRs) shall be obtained verbally from the MIPR Liaison/Coordinator or item manager levels of the requiring departments. Appropriate documentation shall be included in the contract file. Contracting offices are encouraged to establish similar procedures for significant awards below \$500,000 as may be appropriate for their types of contract actions.

SUBPART 1.7 - DETERMINATIONS AND FINDINGS

1.703 Class determinations and findings.

(b) Class determinations and findings (CDF) may not be extended beyond their effective periods. When a CDF is required for an additional period, a new CDF shall be executed. New requests shall set forth a summary of the acquisitions completed under the earlier CDF, as well as acquisitions contemplated under the new request.

(c) Heads of contracting activities shall periodically review effective CDFs to assure that they are still needed.

SUBPART 1.9 - ADMINISTRATION OF DLAD

1.900 Administration and explanation.

The administration and explanation of the DLAD is the responsibility of the Executive Director, Procurement Management.

PART 2

DEFINITIONS OF WORDS AND TERMS

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SUBPART 2.1 - DEFINITIONS

2.101 Definitions.

SUBPART 2.1 - DEFINITIONS

2.101 Definitions.

"Commercial item" - See 12.102(90) regarding determinations of commerciality.

"Contracting Activity." The Executive Director, Procurement Management shall exercise the functions, not otherwise delegated, of head of the contracting activity for any DLA contracting office not designated as a "contracting activity" pursuant to DFARS 202.1. Actions required by the FAR, DFARS, this directive, or other directives involving the functions of the head of the contracting activity not otherwise delegated shall be referred to HQ DLA, ATTN: **DLSC-PPP**.

"Contracting Offices not designated as a Contracting Activity".

Defense Distribution Center (DDC).
Defense Reutilization and Marketing Service (DRMS).
DLA Administrative Support Center (DASC)
Document Automation and Production Service (**DAPS**).
Defense Contract Management Commands (DCMCs) and Defense Contract Management **District** International (DCMDI) (for DCMDI this includes only DCMC Ottawa, Canada, DCMC, Puerto Rico and DCMC, Korea).
Television-Audio Support Activity (T-ASA).
Defense National Stockpile Center (DNSC).

"Chief of the Contracting Office" (**CCO**) as used in this directive, means for the:

Defense Supply Center Columbus (DSCC): Director, Procurement Group;
Defense Supply Center Richmond (DSCR): Executive Director for Procurement;
Defense Supply Center Philadelphia (DSCP): Director of Procurement Management
Defense Energy Support Center (DESC): Director, Alternative Fuels
DRMS, T-ASA, DASC, **DDC**: Director, Contracting;
DNSC: Director, Stockpile Contracts Division;
DCMDE: Chief of Administrative Services;
DCMDW: Chief of Installation Services; and
DCMDI: Director of Operations.

The "Center Senior Procurement Official ("CSPO") (See 1.601-90) is the "CCO" for the contracting activities identified in DFARS 202.1 (i.e., the DSCs/ICPs within DLA.

"Defense Supply Center" (DSC) as used in this directive means DSCC, **DESC**, DSCR, and **DSCP** unless otherwise stated in individual paragraphs.

"Inventory Control Point" (ICP) as used in this directive means DSCC, DESC, DSCR, and DSCP, unless otherwise stated in individual paragraphs.

"Senior Procurement Executive" means the **Executive Director, Procurement Management**.

"Solicitations" includes "request for quotations" or "request for proposals" (see FAR Parts 13 and 15).

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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SUBPART 3.1 - SAFEGUARDS

- 3.104 Procurement integrity.
- 3.104-3 Definition.

(a) The DLA Designated Agency Ethics Official is the General Counsel. The chief counsels of each DLA primary level field activity (PLFA) are designated as Deputy Designated Agency Ethics Officials.

- 3.104-4 Statutory and related prohibitions, restrictions, and requirements.

(a) Prohibition on disclosing procurement information (subsection 27(a) of the Act). Any person who is given authorized or unauthorized access to contractor bid or proposal information or source selection information is authorized to disclose such proprietary or source selection information regarding any DLA contracting offices' procurement of property or services to the following persons:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/*Deputy* Director, DLA/*Commander, Defense Contract Management Command*, DLA/*Commander, Defense Logistics Support Command*, DLA; their Executive Directors and their supporting employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

- 3.104-5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The Executive Director, Procurement Management, Commanders of DLA contracting offices (see 2.101), and chiefs of contracting offices (see 2.101) have the authority to authorize persons, or classes of persons to receive contractor bid or proposal information or source selection information when necessary to the conduct of the procurement. The following persons are authorized access to contractor bid or proposal information or source selection information regarding any DLA contracting offices' procurement of property or services:

(90) The contracting officer, the bid opening officer, the procurement agent, the contracting officer's supervisor and contracting office executive, management, policy, contract review, pricing, technical, legal counsel, small business advisory, associated administrative and clerical personnel, DCMD pricing personnel, preaward survey team members, preaward survey monitor, Defense Contract Audit Agency (DCAA) auditors, and respective engineering support activity personnel.

(91) The Director, DLA/**Deputy Director, DLA/Commander, Defense Contract Management Command, Commander, Defense Logistics Support Command, DLA**; their Executive Directors, and their supporting staff employees.

(92) The Source Selection Authority, and the Source Selection Evaluation Board, Technical Evaluation Panel, and Source Selection Advisory Council members.

(93) Any person or class of persons not listed in (90)-(92) above who is authorized access to automated systems contract files, contract file information, or procurement information.

3.104-6 Disqualification.

(b) Disqualification notice. The designee of the HCA for those contracting offices for which the Executive Director, Procurement Management, serves as HCA (see 2.101) is:

- (1) The Commanders of DRMS, **DDC**, T-ASA, DCMDs, and DCMDI.
- (2) The Administrator, DNSC.
- (3) **The Director, DAPS.**
- (4) **The Headquarters Complex Commandant, DASC.**

(c)(2) Resumption of participation in a procurement. The designee of the HCA for those contracting offices for which the Executive Director, Procurement Management, serves as HCA is the same as listed in (b) above.

3.104-7 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) Requests for ethics advisory opinions shall be submitted to the General Counsel, or the appropriate Deputy Designated Agency Ethics Official, as defined in DoD 5500.7-R, Joint Ethics Regulation.

3.104-10 Violations or possible violations.

(a)(1) When the contracting officer concludes there is no impact, with the concurrence of the chief of the contracting office and local counsel, the contracting officer may proceed with award.

(b) Local counsel shall recommend the action to be taken.

(d)(2) If the contracting officer concludes that profit on the contract or modification involved should be recaptured in accordance with the clause at FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or that the contract should be voided or rescinded in accordance with FAR 3.104-10(d)(2)(ii) and 3.705, he or she shall prepare a report documenting the facts giving rise to the conclusion that a violation of the Act has occurred. That report shall be prepared in consultation with local counsel and include the contracting officer's recommendation for the action to be taken. When profit recapture is recommended, the contracting officer will recommend an amount to be recaptured. When rescission or voiding of the contract(s) is recommended, the contracting officer will estimate the value of the tangible benefits received and retained under the contract(s) in question. The report shall be forwarded to the General Counsel, for action.

(f) Notification shall be submitted directly to the Director, DLA by letter signed by the Commander (Administrator, DNSC or the **Director, DAPS**) of the contracting office.

(g) The designee of the HCA for DNSC, DAPS and DASC, for which the Executive Director, Procurement Management, serves as HCA are the Administrator, DNSC, the **Director, DAPS and the Headquarters Complex Commandant, DASC**.

SUBPART 3.3 - REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

3.301 General.

(b) Whenever the contracting officer finds evidence of suspected antitrust violations, he/she shall forward to local counsel, a report of information available to establish possible violation of the antitrust laws.

(b)(90) Exchange of information regarding questionable contractor business practices. Information revealed by postaward reviews, audits, or similar sources on price overcharges and other questionable business practices may be of concern to other DoD activities that conduct business with the firm involved. Sound business practices dictate that this information be made available to DoD activities upon request. Also, such information, including the name and address of the firm involved, a brief description of the questionable business practice, and the manner in which it was revealed, shall be forwarded in writing to the chief of the contracting office and cognizant DCMDs.

SUBPART 3.5 - OTHER IMPROPER BUSINESS PRACTICES

3.590 Prohibition against the solicitation of "free issues."

The solicitation of supplies or services from individuals or firms at no cost ("free issues") may lead to a perception on the part of these individuals or firms that either: there is a benefit to accrue to them in the future if they satisfy the request at no cost; or that they are under an obligation to satisfy the request at no cost as a condition of receiving future Government business. These perceptions must be avoided. As a result, the solicitation of supplies or services from individuals or firms at no cost is prohibited. However, when an individual or a firm voluntarily offers to provide supplies or services at no cost, the Government may accept such offers without compensating the supplier therefor. A contract is not established in such cases as there is no consideration for the supplies or services received. In cases where the Government requires an obligation from the supplier (e.g., a warranty for the supplies or services), a no cost offer should never be accepted.

SUBPART 3.7 - VOIDING AND RESCINDING CONTRACTS

3.704 Policy.

(a) For purposes of this subpart, the Head of the agency designee is the Special Assistant for Contracting Integrity (SACI), General Counsel.

3.705 Procedures.

(a) Reporting. The facts concerning a final conviction for any violation of 18 U.S.C. 201-224 shall be reported by the contracting officer to the General Counsel, HQ DLA, within 20 days after the contracting officer learns of the final conviction. The report shall be signed by the contracting officer and submitted by the Commander of the reporting primary level field activity (PLFA). The report shall:

- (1) Identify and include a copy of the contracts(s) involved;
- (2) Include a copy of the judgment order evidencing or confirming a final conviction as defined in FAR 3.702;
- (3) List in detail the tangible benefits received and retained by the reporting PLFA in connection with the performance of the contract(s) which relate to the final conviction;
- (4) Provide the contracting officer's estimate of the fair value of benefits received and retained and include an explanation of how that estimate was calculated;
- (5) Include a recommendation concerning the amount to be recovered and the property to be returned as a result of action under this subpart; and

(6) Indicate whether a report recommending debarment of the parties involved has been forwarded to the General Counsel. The contracting officer's report shall be coordinated with local counsel prior to submission to the General Counsel. After review, the General Counsel, will refer the contracting officer's report to the SACI for action. The SACI shall promptly notify the Civil Division of the Department of Justice when action is contemplated under Subpart 3.7 of the FAR.

SUBPART 3.8 - LIMITATION ON THE PAYMENT OF FUNDS TO
INFLUENCE FEDERAL TRANSACTIONS

3.804 Policy.

(b) Reporting. All SF LLL and LLL-A (disclosure forms) shall be forwarded to **DLSC**-PPP no later than 20 April and 20 October after each reporting period. Reporting periods shall end on 31 March and 30 September of each year. Negative reports are required.

PART 4

ADMINISTRATIVE MATTERS

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- 4.670-6 Types of DD Forms 350, Individual Contracting Action Report.

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- 4.7103-1 Criteria for establishing.

SUBPART 4.73 - CENTRAL CONTRACTOR REGISTRATION

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SUBPART 4.6 - CONTRACT REPORTING

4.603 Solicitation provision.

(a) Contractor Identification Number. The contracting activity will be required to provide the contractor's nine position DUNS number.

4.670 Defense Contract Action Data System (DCADS)

4.670-3 Contracting office responsibilities.

- (a) For DD Form 350, Individual Contracting Action Report, contracting offices--

(2)(iv) For DLA, the input of records shall be accomplished within 3 workdays of the action date. Error corrections will be made within 3 workdays from the date the record appears on the error file. Closeout for the reporting period will be the tenth workday following the last day of the month, except September may be extended for not more than 10 days.

(2)(v) For all actions involving the current report year and the year prior to that, the reporting activity shall prepare the appropriate input and/or correcting documents for processing into the DLA Contract Action Reporting System (DCARS). The reporting activity is responsible for submission of all reportable contracting actions. Contact **DLSC**-POA for instructions for entering records not reported before the fiscal year closeout date.

(3)(i) **DLSC**-POA will process corrections or cancellations only for those records that predate the most recent full reporting fiscal year. However, corrections will not be made to records more than 5 fiscal years old. The reporting activity shall prepare the document using the current fiscal year form and forward to HQ DLA for processing. The reporting activity shall include a memorandum which explains why the original action required correction or cancellation.

(5)(i) DLA contracting offices with DCARS capability may use an electronic equivalent to comply with the DFARS requirement for contract file record.

- (b) For DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less, contracting offices--

(2)(i) Closeout for the reporting period will be the tenth workday following the last day of the month, except September may be extended for not more than 10 days.

(3)(i) For DLA, any prior month DD Form 1057 report that requires correction or adjustment will be submitted using a Correct Code 2 Report. Current month DD Form 1057 reports that require correction or adjustment will be corrected before month-end closeout.

4.670-6 Types of DD Forms 350.

(b)(4)(i) A DD Form 350 template record shall be entered into the DLA Contract Action Reporting System (DCARS) for all other indefinite delivery contracts (IDCs) or agreements awarded by DLA contracting offices. These records shall indicate the total estimated dollar value as a subelement to Item B8. These actions are not reported to DoD but support DLA management.

(c)(3) Local procedures which combine two or more actions into a single award or modification may require multiple reports. Any reportable portion with a dollar value of \$25,000 or less shall be reported on the DD Form 1057. These procedures will permit accurate reporting of set-asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Examples include but are not limited to the following:

(i) One part of the action was unrestricted while the other part involved one or more socioeconomic programs such as set-asides; or

(ii) A part of the action was under multiyear contract procedures (see FAR 17.1) and the remainder was not.

(c)(4) If multiple reports are required, the unrestricted or multiyear portion should be reported as the initial or definitive contract and the other portion as a modification. The second portion is a modification of the contract for reporting purposes, but may be assigned a modification number of P00000 to indicate this was reported as a modification for reporting purposes. Alternatively, an alpha character may be used in the last four positions of the modification number block to indicate a modification for the purpose of contract reporting, e.g., P0000A, P0000B, etc.

SUBPART 4.70 - UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERS

4.7003 Basic PII number.

(90) The letter Y in the ninth position of the basic procurement instrument identification number is reserved to identify imprest fund orders posted to the Standard Automated Materiel Management System (SAMMS) or other DLA automated system.

SUBPART 4.71 - UNIFORM CONTRACT LINE ITEM NUMBERING SYSTEM

4.7103-1 Criteria for establishing.

(d)(90) The cost of a deliverable, a non-deliverable, or a financial adjustment for which the contractor is entitled to payment, but did not appear on the purchase request, or was not known prior to receipt of the bids/offers, may be identified as an additive contract line item number (CLIN) in accordance with DFARS 204.7103-1(d) and DLAM 4715.1, Manual of Operating Procedures for the Contracting Subsystem, Appendix E. Additive CLINs create a system record for such charges at activities using the SAMMS.

SUBPART 4.73-- CENTRAL CONTRACTOR REGISTRATION

4.7303 Procedures.

4.7303(b)(2)(d) Provide the Commercial and Government Entity Code on contractual documents transmitted to the payment office. (See DFARS 253.213-70(e), Block 9.)

PART 5

PUBLICIZING CONTRACT ACTIONS

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- 5.203 Publicizing and response time.**
- 5.207 Preparation and transmittal of synopses.**

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- 5.404 Release of long-range acquisition estimates.
- 5.404-1 Release procedures.

SUBPART 5.5 - PAID ADVERTISEMENTS

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SUBPART 5.2 - SYNOPSES OF PROPOSED CONTRACT ACTIONS

5.202 Exceptions.

(a)(2) The requirements of FAR 5.202(a)(2) are satisfied upon execution of the justification (see FAR 6.302-2(c)(1)) or upon receipt by contracting personnel of the information described in 6.303-2(b). (The use of the exception to synopsisizing contained in FAR 5.202(a)(2) does not necessarily, in and of itself, preclude the use of full and open competition.)

5.203 Publicizing and response time.

(h) The cognizant DLA contracting office, if it elects to take advantage of the authority at FAR 5.203(h), is responsible for identifying the general category or categories of items and publishing the forecast. If using a combined synopsis/solicitation for acquisitions subject to the North American Free Trade Agreement (NAFTA) or the Trade Agreements Act (TAA), a minimum response time of 10 days is required.

5.207 Preparation and transmittal of synopses.

(e)(4) As required in FAR 5.207(e)(4), when FAR Part 12 is not used, Numbered Note 26 shall be cited in the synopsis notice. This note states that Part 12 is not being used because the Government has not identified any commercial items that can meet the requirement. The note advises prospective suppliers that they have 15 days to identify, and indicate their interest in providing, a commercial item that can meet the requirement. When Numbered Note 26 is used, the solicitation should indicate that offers of any item other than the exact approved item cited in the procurement item description (PID) will require an evaluation for technical acceptability. The solicitation should also describe the circumstances when an evaluation will and will not be conducted and when the instant acquisition will and will not be delayed. The provision at DLAD 52.217-9002, when applicable, is available for this purpose; or local provisions can be developed that are consistent with the guidance at DLAD 17.7501(b)(4).

SUBPART 5.3 - SYNOPSES OF CONTRACT AWARDS

5.303 Announcement of contract awards.

(a) Public announcement.

(90) Information on all proposed contract actions (see DFARS 205.303(a)(i)) of \$5 million or more shall be submitted on DLA Form 1693, Contract Announcement, to the **Staff Director, Office of Congressional and Public Affairs**, by facsimile ((703) 767-6187 or DSN 427-6187) at least 2 full working days prior to the date of award. All required approvals and funding must be obtained prior to submission. Changes, such as changes in the availability of funds, shall be forwarded to the **Congressional and Public Affairs** Office to take appropriate action. Excluded from this requirement are mandatory orders placed with Federal Prison Industries, Inc. (FPI), the National Industries for the Blind (NIB), and the NISH, **serving people with a range of other disabilities**. The value of contract actions subject to announcement should not include the amount of any Government furnished property. Except for **DESC**, each announcement must indicate the concurrence of the chief of the contracting office.

SUBPART 5.4 - RELEASE OF INFORMATION

5.401 General.

(b) See 7.304(c)(91) for treatment of requests for information relevant to commercial activities cost studies.

5.404 Release of long-range acquisition estimates.

5.404-1 Release procedures.

(a) Application. The authority at FAR 5.404-1(a) is delegated to Heads of contracting activities or their designees.

SUBPART 5.5 - PAID ADVERTISEMENTS

5.502 Authority.

(a)(i) For those contracting offices for which the Executive Director, Procurement Management serves as Head of the Contracting Activity (see 2.101), approval authority for newspaper advertisements and for publicizing contracting information is redelegated to the activity commanders, and the **Director**, Document Automation and Production Service, **the Headquarters Complex Commandant, DASC, and the Administrator**, Defense National Stockpile Center. This authority is not further delegable.

PART 6

COMPETITION REQUIREMENTS

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SUBPART 6.5 - COMPETITION ADVOCATES

6.502 Duties and responsibilities.

6.003 Definitions.

"Procuring activity," as used in this Part and in FAR Part 6 and DFARS Part 206, means the contracting activities defined in DFARS 202.101 and the following:

Defense Distribution Center.

Defense Reutilization and Marketing Service.

Defense National Stockpile Center.

Television-Audio Support Activity.

Document Automation and Production Service.

DLA Administrative Support Center

SUBPART 6.1 - FULL AND OPEN COMPETITION

6.101 Policy.

(a) An acquisition provides for full and open competition if:

(90) The solicitation contains or references a complete, unrestrictive technical data package.

(91) Such data can be used for a determination of responsiveness/technical acceptability.

(92) The solicitation and the circumstances of the solicitation contain no limiting restrictions other than those required by law or regulation; and

(93) The Government has taken all reasonable steps to promote full and open competition:

(i) Ensured that specifications are not unduly restrictive in that they reflect the Government's needs, and are, to the maximum degree possible, functional in nature.

(ii) Performed market surveys and/or market research, as appropriate.

(iii) Complied with FAR Subpart 5.2.

(iv) Otherwise taken all reasonable steps to inform potential suppliers of its requirement.

The number of offers expected or received against the solicitation is not relevant to the determination that an acquisition does or does not provide for full and open competition. For example, if all the above conditions are met, an acquisition for an item on a Qualified Products List is full and open competition regardless of the number of products qualified (see FAR 9.2).

SUBPART 6.2 - FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

6.202 Establishing or maintaining alternative sources.

(b)(1) Authority to sign determinations and findings (D&Fs) required by FAR 6.202(b)(1) has been delegated to the Executive Director, Procurement Management. Proposed D&Fs shall be forwarded to DLSC-PO for signature by the Executive Director, Procurement Management. Requests to sign proposed D&Fs shall be forwarded by a letter of transmittal signed by the Commander of the requesting component or the Administrator, DNSC, the **Director, DAPS, or the Headquarters Complex Commandant, DASC**. The letter of transmittal shall include:

(i) The proposed D&F in the format specified in DFARS 206.202(b)(ii) and supporting documentation in accordance with DFARS 206.202(b)(i).

(ii) The acquisition plan (see FAR Subpart 7.1).

6.203 Set-asides for small business.

(b)(90) Notwithstanding the criteria for full and open competition in 6.101, when an acquisition (or portion thereof) is set-aside for small businesses in accordance with FAR Subpart 19.5, and complete, unrestrictive technical data is not available, no justification for other than full and open competition is required.

SUBPART 6.3 - OTHER THAN FULL AND OPEN COMPETITION

6.302-2 Unusual and compelling urgency.

(b)(90) Justifications and Approvals (J&A) for Issue Priority Group I (IPG I) requirements (i.e. Priority Designators 01, 02 and 03) citing Not Mission Capable Supply indicators (MILSTRIP position 62-64) of 999, N** or E** and/or Office of the Secretary of Defense/Joint Chiefs of Staff projects codes (MILSTRIP position 57-58) beginning with "9" shall cite the priority and these additional indicators of urgency as the basis for limiting competition. No additional information is required to show harm to the Government. Contracting Officers shall accept the assignment of these indicators (which are assigned by the Commanding Officer of the requisitioning unit or his designated representative) as the certification of urgency and harm to the Government by technical or requirements' personnel required by FAR Subpart 6.303-2. The requirements certification, in such cases, resides with the customer. Such certifications do not have to be on the J&A.

(b)(91) Requirements citing a priority designator 01, 02 or 03 with no other indicator of urgency may also cite the priority alone as the basis for urgency. If the circumstances of such procurements seem questionable (for example, the item being procured seems routine in nature or items are repeatedly requisitioned with high priority designators), it may be appropriate to obtain additional information from the customer to further explain the urgency. Although DLAD 4410.1, Uniform Material Movement and Issue Priority System, states that priorities will not be challenged in DSC processing, the request for additional information to support the J&A does not constitute a challenge to the priority assigned. If misapplication of priority is suspected, these instances should be reported in accordance with DLAD 4410.1.

(c) Limitations.

(2) Whenever competition is limited pursuant to this authority, the historically lowest priced source(s) shall be solicited. An award may be made to other than the lowest priced offeror provided the premium paid is reasonable and consistent with the extent to which delivery is required to be expedited. Quoted prices and delivery terms for each source solicited shall be fully documented, along with rationale which clearly supports source selection. (See 13.106(c)(1).)

6.302-3 Industrial mobilization; or engineering, developmental, or research capability; or expert services.

(90) Contracts awarded under the authority of 10 U.S.C. 2304(c)(3), (see FAR 6.302-3(a)(2)(i) shall include a surge option clause (see DFARS 217.2008-70(b)) or some other type of surge readiness provision.

6.302-7 Public interest.

(c) Limitations.

(1)(i) Requests for making determinations and findings (D&Fs) under authority of 10 U.S.C. 2304(c)(7), as implemented by FAR 6.302-7, shall be forwarded to **DLSC**-PO by a letter of transmittal signed by the Commander of the component for submission, through the USD(A&T), to the Secretary of Defense.

(3) Every request to exercise the authority of FAR 6.302-7(a) shall be accompanied by a justification (see FAR 6.303) supporting the D&F.

6.303 Justifications.

6.303-1 Requirements.

(b) DLA contracting offices shall establish approval levels for the certifications required by FAR 6.303-1(b).

(d) The agency point of contact with the Office of the United States Trade Representative is **DLSC**-PPP.

6.303-2 Content.

(a)(11) The justification shall include, when applicable, a description of (i) the action being taken to obtain a data package adequate to establish competitive acquisition of the item and (ii) market research efforts to eliminate impediments to subsequent acquisitions.

(a)(90) *Justifications requiring approval by the Senior Procurement Executive, DLA, should be prepared using the following format which may be adapted and supplemented to suit the needs of the particular acquisition, provided each justification 1) includes the specified topic headings, 2) cites the associated statutory requirement of 10 U.S.C. 2304(f)(3)(A)-(F), and 3) sets forth the facts and rationale in a logical sequence. Under each heading, use as many paragraphs as needed to explain the justification. Avoid jargon and overly technical or esoteric language. Numbering of sections and paragraphs is recommended for ease of reference.*

Title: "Justification for Other than Full and Open Competition for [item/service to be purchased] under authority of 10 U.S.C. 2304 [specific exception number]."

1. Summary/Introduction: State in a few sentences 1) the field activity/agency, 2) what is being bought, 3) the estimated value and contract duration, and 4) the statutory authority cited for other than full and open competition. (This introductory section should be concise, as these points will be developed in detail later in the document.)

2. Description of Agency's Need (10 U.S.C. 2304(f)(3)(A)): Include a summary of the origin of the procurement, a description of the supplies/services needed, the specific need or use for the item/service, and any other general information needed to understand the context of the procurement. If this is a lengthy section, additional topic headings may be appropriate, such as "Background," "Current Procurement Efforts," etc.

3. Authority for Other than Full and Open Competition (10 U.S.C. 2304(f)(3)(B)): Cite the authority and provide the rationale. If a particular company's unique qualifications are critical, discuss those here. This section should include all facts supporting the use of other than full and open competition. This section should also address why the full quantity to be contracted for needs to be purchased without using competitive procedures.

4. Price/Cost Considerations (10 U.S.C. 2304(f)(3)(C)): Discuss relevant pricing issues, including the basis for determining that the anticipated price/cost will be fair

and reasonable. Also include here, or elsewhere as appropriate, length of contract, quantity, and other contract particulars bearing on the price/cost.

5. Market Research/Efforts to Obtain Competition (10 U.S.C. 2304(f)(3)(D)&(E): Discuss market research, synopsis, and other efforts made to publicize the requirement and generate competition. Also include a listing of sources that expressed, in writing, an interest in the procurement. (Market Research may be addressed separately, if appropriate.)

6. Actions Being Taken to Overcome Barriers to Competition (10 U.S.C. 2304(f)(3)(F)): Describe, for example, any efforts to identify and evaluate less restrictive methods of expressing the requirement. Include, when applicable, a description of the action being taken to obtain a data package adequate to acquire the item competitively in future acquisitions.

I hereby certify that the information contained in this justification is accurate and complete to the best of my knowledge and belief.

Date

Contracting Officer

Over \$50 million:

Other signatures as appropriate:

Chief Counsel

Other

I have reviewed and hereby recommend that this Justification be approved:

DLA Competition Advocate

Signature and Date

DLA office of Counsel

Signature and Date

Approval:

DLA Senior Procurement Executive

Signature and Date

(a)(91) Justifications and approvals (J&A's) for awards made under broad agency announcements that support industrial mobilization.

(1) J&A's for noncompetitive awards made in support of industrial mobilization must properly address the compelling reasons for limiting awards to a particular source or sources and the unique capabilities of the targeted source(s) to support the industrial base. FAR 6.302-3(a)(2) requires that the contracting officer demonstrate that other than full and open competition is necessary in order to "keep vital facilities or suppliers in business or make them available" in case of a national emergency or to achieve industrial mobilization. Generally, the J&A must contain sufficient information about the item or service and the supporting industrial sector to demonstrate clearly that the contracting officer's determination to include a particular source or sources in, and exclude others from, the supply base for that item or service is appropriate.

(2) The contracting officer shall address the following considerations in the J&A:

(a) the relationship between the agency's program objectives and the acquisition strategy employed;

(b) the nature of the item or service (e.g., complexity, criticality, unique features) and the supporting industrial sector (e.g., industry capacity, are sources domestic or foreign, small or large, planned producers, dependent on government business);

(c) the current supply environment (e.g., if the item is currently stocked in inventory, discuss why the agency cannot continue to buy this item in quantity and stock it; further, discuss why the agency must employ a different supply method, such as quick response or direct vendor delivery, in order to maintain defense readiness); and

(d) the unique capabilities of a particular source (or sources) to meet agency mobilization requirements, such as 24 hour delivery, surge capability, or dual-use technology.

(3) The J&A shall also include the following information:

(a) a description of how the specific item or service was selected.

(b) how the volume of requirements to be awarded was determined appropriate;

(c) volume and proposed disposition of any remaining requirements for the designated item or service;

(d) future plans for implementing successful strategies using full and open competition.

(4) The contracting officer shall consult with his/her Office of Counsel in the preparation of J&A's in support of industrial mobilization.

(b)(90) In addition to the examples provided in FAR 6.303-2(b), requirements personnel shall certify that:

(i) The purchase request covers only that quantity needed to satisfy an unusual and compelling urgency; and

(ii) For stocked items, the items are out of stock or existing stock is insufficient to satisfy the requirement, and, if possible, an explanation of why existing stocks are insufficient or the item is out of stock; for non-stocked items, a statement to that effect.

6.304 Approval of the justification.

(a)(4)(A)(1) The authority to approve justifications for other than full and open competition for a proposed contract over \$10 million but not exceeding \$50 million is delegated to any officer or employee at each procuring activity who --

(i) if a member of the Armed Forces, is a general or flag officer, or

(ii) if a civilian, is serving in a position in Grade GS-16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees).

(a)(4)(A)(1)(90) Justifications requiring approval by the Senior Procurement Executive (including class justifications based on estimated total value of the class) shall be forwarded to **DLSC-PO** by a letter of transmittal signed by the Commander of the activity requesting approval (**Director** for **DAPS**, Administrator for **DNCS**, **Headquarters Complex Commandant** for **DASC**). The letter of transmittal shall be forwarded sufficiently early as to allow for headquarters review and approvals prior to the commencement of negotiations. The letter of transmittal shall include:

(i) The proposed justification (see FAR 6.303).

(ii) The acquisition plan (see FAR Subpart 7.1).

(iii) Any other pertinent supporting facts or information bearing on a decision to approve the justification.

(a)(4)(A)(1)(91) The DLA competition advocate shall review and recommend approval/disapproval of justifications exceeding \$50 million.

SUBPART 6.5 - COMPETITION ADVOCATES

6.502 Duties and responsibilities.

Additional duties and responsibilities are contained in DoDI 5000.2, Defense Acquisition Management Policies and Procedures, and DLAD 4105.17, Competition Advocate Program.

(b)(3) When a supporting staff exists, performs market research efforts to identify and/or develop existing and potentially new sources of supply (i.e., sources research and sources development efforts) (i) on a continuing, programmatic basis, for selected items such as those that are newly managed, have high payback potential, or have unfinished efforts related to a prior acquisition, and (ii) when requested by the contracting officer in connection with a specific acquisition.

PART 7

ACQUISITION PLANNING

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SUBPART 7.1 - ACQUISITION PLANS

7.102 Policy.

(b) A Business Case Analysis, in accordance with MM (*now DLSC*) Memorandum dated May 15, 1997, subject: DLA Materiel Management (MM) Initiative Management Policy, shall be accomplished coincident with planning for a Shift to Commercial Practices, **or other shift in method of support**. The price comparison shall be made on the basis of total estimated costs to the customer, i.e., materiel purchase cost plus the cost recovery markup for logistics support costs charged by DLA, plus an estimate of the customers' own logistics costs (storage, delivery, forecasting, requisitioning or buying, etc.) **for the expected order quantities of all items available for order under the contract(s), i.e., after exclusion of price and/or delivery outliers**. The analysis, which shall be retained in the resulting contract file, shall demonstrate that the support decision and the resulting purchase decisions will provide added value to our customers (e.g., lower overall costs inclusive of their logistics costs, improved deliveries, and/or enhanced supplier support, etc.).

(90) Market surveys (see FAR 7.101) and market research (see FAR and DLAD PART 10) shall be performed consistent with any local operating procedures.

(91) Written acquisition plans are required for all proposed contract actions other than those **not expected to exceed the simplified acquisition threshold**. Acquisition plans for proposed contract actions not required to be approved by the Acquisition Planning Executive Council (APEC) (see 7.104-90) shall, at a minimum, be initiated at the time the purchase request is received by the buyer, prepared substantially in accordance with the illustrative format at 90.1102, and approved at a level above the level of the buyer. The approval level shall be established by the chief of the contracting office. The illustrative format may be modified to suit the needs of the contracting office. A standard DLA-wide form is not prescribed in order to permit development of local forms or formats.

(92) Acquisition plans for proposed contract actions required to be approved by the APEC shall be prepared in accordance with FAR 7.105, DFARS 207.105, and 90.1101 of this directive, except as provided in 7.104-90(h) below in regard to **DSCP**.

(93) The acquisition plan shall accompany the justification for other than full and open competition (see FAR 6.303, FAR 6.304, and 6.101 and 6.304 of this directive) when it is forwarded to the Activity Competition Advocate. The Activity Competition Advocate shall also be provided a copy of the acquisition plan for those acquisitions for which there is not a history of receipt of more than one offer and price competition is not expected to be received on the acquisition.

(94) The plan shall identify planned cost and delivery metrics and the POC(s) monitoring contract performance.

7.103 Agency-head responsibilities.

(a) Requirements for contract actions, which must be awarded by the end of the fiscal year, must be submitted to the contracting office by 31 July of that fiscal year. Solicitations for requirements received after 31 July shall not be issued unless approved by the chief of the contracting office.

A contract action log shall be maintained by the contracting office for all purchases of contracted advisory and assistance services, periodicals, pamphlets, and audiovisual products. Existing logs may be used for this purpose, provided some means is devised to readily identify these types of contract actions that are highly vulnerable to waste.

(d) Written acquisition plans required by 7.102(91) may be effected on a system basis (see FAR 7.102) using a comprehensive plan for a specified period of time (i.e., quarterly, semi-annually or annually).

7.104 General procedures.

(b)(90) The Defense Production Act and the Defense Guidance require DoD to maintain an adequate production base to promote national security. In this regard, industrial preparedness planning is conducted to ensure that the industrial base is adequate to offset war reserves and provide combat support in emergencies. When an item is being considered as an item of supply from a new source, an industrial base analysis for the item should be accomplished or updated. This is particularly important when the item will be supplied by a single source, as well as when it is an Industrial Preparedness Planning item either for war reserve shortfall or based upon past production history; a weapon system item coded essentially codes 1 and 5; or an item supporting a Commanders in Chief Critical Item List (CINC CIL) item. For these types of items, adequate capacity is necessary to meet surge and emergency increased demands.

(b)(91) Measures to protect and enhance the production base readiness must be taken any time the procurement support method changes (e.g., such as conversion from individual purchases to prime vendor or corporate contract type arrangements), regardless of the type of concern that will provide the item.

(c)(90) The contracting officer is responsible for taking timely actions to assure that the procurement cycle for forecasted requirements is adequate so it is not necessary to place an award or order on an undefinitized basis.

7.104-90 Acquisition Planning Executive Council (APEC) reviews.

(a) The Executive Director, Procurement Management is the reviewing official for all acquisitions conducted by any contracting office under the cognizance of DLA. Acquisitions requiring review fall into the categories described under 7.104-90(d), or have a significant impact on Agency workload (e.g., at depots or DLA ICPs). Reviews will be conducted as Acquisition Planning Executive Council (APEC) reviews, requiring either: review of written documents (as described by 7.104-90(c)) only; review of written documents and a briefing; or presentation of a briefing only. For all acquisitions potentially subject to review, DLA contracting offices shall submit advance notification to HQ DLA, ATTN: **DLSC**-POA, including:

(1) A brief narrative summary of the circumstances of the acquisition, including the reason for submission, a description of the effort being contracted for, and an identification of the customer(s), item(s)/nomenclature, delivery parameters, and unique/innovative aspects of the acquisition. The notification shall also include the PR number (if applicable), quantity, solicitation and evaluation methods, J&A authority (if applicable), and type of contract, and the estimated dollar value of the contract, for each base year and each option year, if applicable. Additionally, the summary must identify the cognizant program manager and/or contracting officer, including office symbol(s), telephone and fax number(s) and e-mail address(es).

(2) The following information may be provided if available at the time of notification. Alternatively, a statement should be included that explains that the information is or will be included in the acquisition plan, or is not yet available, or is included in another document already provided to Headquarters DLA, such as a DLSC Initiative document (Business Case), Business Plan, or POM submission.

(i) A statement that the impact on depot workload has been assessed, and that the impacted distribution region(s) have been made aware of this potential impact.

(ii) A statement describing the impact on workload at ICP(s) other than the one managing the program or executing the contract, if applicable, and verification that the affected ICP(s) have been apprised.

(iii) A statement that the impact on DCMC workload has been assessed, and that DCMC has been made aware of this potential impact.

(iv) A statement confirming that readiness, sustainability, and surge requirements (as described by 17.9300) have been included in the proposed acquisition.

(v) A statement confirming that a transition plan (dealing with such issues as depleting residual assets, maintaining quality, perpetuating engineering design changes, etc.) has been developed when migrating from one support method to another, e.g., depot support to direct vendor delivery.

(vi) A statement that the impact on the Military Service component(s) has been assessed, and that the Service has been made aware of this potential impact.

(3) Within five working days after receipt of the summary, **DLSC-P** will advise the contracting office whether the acquisition is subject to a review of written documents only, a review of written documents accompanied by a briefing, or requires only a briefing to the APEC.

(b) The Executive Director, Procurement Management (**DLSC-P**) is Chairperson of the APEC, and as such, will designate members of the APEC on a case-by-case basis for each procurement subject to APEC review. APEC membership normally consists of (but is not limited to) the following individuals: Executive Director, Resource Planning and Performance (DLSC-B), Executive Director, Logistics Management (DLSC-L), Director, Supply Chain Development & Integration (DLSC-AI), General Counsel (GC), Comptroller (FO), and **Commander, DCMC**.

(c) For APEC reviews, acquisition plans, reviewed and coordinated by appropriate field functional elements, accompanied by applicable justifications, statements of work, source selection plans and evaluation criteria, and a copy of the proposed solicitation, shall be forwarded by the Chief of the Contracting Office at each DLA contracting activity to the Executive Director, Procurement Management (ATTN: **DLSC-POA**) for review and approval by the APEC. The information described at 7.104-90(a)(2) should be provided with the acquisition plan, if not provided previously.

(d) Procurements requiring APEC review include, but are not limited to, actions:

(1) requiring approval by the Senior Procurement Executive (see FAR 6.304, DFARS 206.304(a)(4)(A), and DLAD 6.304(a)(4)(A)(1)(90);

(2) of an innovative or unusual nature, and that have a significant dollar value or a major impact on industry or government activities, e.g., the initiation of the prime vendor **and virtual prime vendor** quick response programs;

(3) which have Congressional, OSD, or White House interest;

(e) Contracting offices may request oral presentation of an acquisition plan to expedite processing, in which case the acquisition plan will be forwarded so as to arrive at HQ DLA (DLSC-POA) 5 (five) working days prior to the scheduled briefing. Upon completion of an oral presentation to the APEC, the briefer will be advised of unconditional approval, conditional approval, or disapproval. Unconditional and conditional approvals are authority to proceed with the acquisition. All decisions will be transmitted by letter to the respective office.

(f) Once an acquisition plan is approved by the APEC, no changes may be made in the planned approach without the prior approval of the APEC.

(g) All **DSCP** acquisitions subject to APEC review shall be so designated in the DLA Acquisition Planning System (DLA APS). The narrative accompanying plans subject to APEC review and approval shall include the essential information and documentation required by APEC. A summary of each acquisition included in the DLA APS shall be furnished to the Executive Director, Procurement Management, ATTN: **DLSC-POA**, after approval by the appropriate officials at **DSCP**. Acquisitions requiring APEC review shall

be clearly identified when a summary is submitted. **DLSC**-POA will contact **DSCP**-P to schedule APEC reviews.

(i) As other ICPs and procurement offices implement the use of the DLA APS (which is an enhancement of the **DSCP** Acquisition Planning System, and currently is available to all contracting offices), the APEC processes described in this paragraph will also apply to their acquisitions.

(h) The Directorate of Contracting, **DASC** (DASC-C), is subject to the same APEC procedures as other DLA contracting offices.

7.105 Contents of written acquisition plans. See 90.1101.

SUBPART 7.2 -PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

7.202 Policy.

(b) For solicitations for IDCs and other long-term contracts covering voluminous items for which response by the offeror to the clause at FAR 52.207-4 is not practicable, see 7.203(90).

7.203 Solicitation provision.

(90) The FAR provision shall be tailored, or a locally developed clause used, to obtain volume discounts, market basket discounts and/or separate prices at the offeror's price break quantities, across the range of potential order quantities, under IDC and other long-term contracts where response to the standard FAR provision is impracticable.

SUBPART 7.3 - CONTRACTOR VERSUS GOVERNMENT PERFORMANCE

7.304 Procedures.

(c)(1) Where the Executive Director, Procurement Management is the HCA (see 2.101), solicitations in which a comparison will be made between contractor and Government performance in accordance with OMB Circular A-76 shall be forwarded to HQ DLA, ATTN: **DLSC**-PPP for review and approval prior to release (see 1.690-6(b)(3)).

(90) Procedures for SBA requested 8(a) commitments.

When, due to application of the confidentiality requirements of FAR 7.304(d), it is not possible to obtain an in-house cost estimate independent of the Government's sealed in-house offer for use in determining an estimated current fair market price (FMP), the contracting officer may determine the FMP based on cost or price analysis in accordance with the provisions in FAR 19.805 and 19.806, as appropriate. When agreement is reached with the SBA or its subcontractor on the terms and conditions of the proposed contract, the Government's sealed in-house estimate shall be opened and the cost comparison completed in accordance with FAR 7.306(b). When agreement between SBA or its subcontractor as to the terms and conditions of the proposed contract is not reached and the SBA withdraws its certification, the Government's sealed in-house estimate shall not be opened. A competitive solicitation shall subsequently be issued, either on a set-aside or non-set-aside basis in accordance with FAR 7.306. The 8(a) firm(s) for which the SBA commitment was originally required shall be provided an opportunity to offer on the competitively issued solicitation. The procedures of FAR 7.306(a) or (b), as appropriate, apply to the balance of the cost comparison process.

(91) With respect to requests for information related to commercial activities cost studies, the contracting officer (or other **authorized individual**) must consider the guidelines contained in DLAR 5400.14, DLA Freedom of Information Act Program, paragraph VIII.E., and promptly determine if such information should be withheld or released. Requests shall not be required to be submitted under the Freedom of Information Act (FOIA) in order to be considered. If the information is to be withheld, the requestor shall be notified immediately of the decision to withhold the information and of the right to submit a written request for the information under FOIA, if the request was not submitted under FOIA initially. Requests for information may be an indication that the solicitation contains defects or ambiguities, or that the CA solicitation process would be improved by dissemination of the information to all prospective offerors. Therefore, as a part of the disposition of each request, the contracting officer shall consider the need to issue an amendment to the solicitation.

7.306 Evaluation.

(a) Sealed bidding.

(3) The contract file must be forwarded to HQ DLA, ATTN: **DLSC**-PPB, for review and approval, and the PLFA must be advised by **DLSC**-PPB that the file is approved before the PLFA commander signs the decision summary form (DLA Form 1764, Cost Comparison Analysis In-House versus Contract Performance, or DLA Form 1764a, Cost Comparison Analysis Expansions, New Requirements, and Conversion to In-House). The contracting officer shall not sign the decision summary form until **DLSC**-PPB approval of the contract file has been received or until **DLSC**-PPB comments, that are a condition of approval, have been properly addressed.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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SUBPART 8.6 - ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

- 8.600-90 Definitions.

"Current market price (CMP)," as used in this subpart, means the actual current price for purchase of the item in the competitive market place in the quantities normally bought and sold and at customary terms and conditions. If actual sales prices are unavailable or nonexistent, the CMP means a price which is estimated in a similar manner as prescribed in FAR 19.807(b) and (c) (but see restriction on price comparisons in FAR 15.404-1(b)(90)(2)(ii)).

"Unrestricted," as used in this subpart, refers to the portion of the acquisition not purchased from FPI, whether or not a set-aside has been made. **(See Part 19).**

- 8.602 Policy.

(a)(90) In no event shall a unit price higher than the highest award price, adjusted for any significant **differences between the buys**, be considered to be the current market price. **Exclude a high price if resulting from** a distressed bid, or bidder's mistake, or if the award price was inflated because of **additional** requirements.

(a)(91) In addition to assuring that the award price to FPI does not exceed the current market price, the contracting officer shall:

(i) Request FPI to furnish its cost estimate (FPI Form 73, Unit Cost Estimate) with supporting documentation (material quotes, etc) for all first time buys and whenever current actual market prices are unavailable or when there is basis for concern regarding an FPI quote;

(ii) Consider requesting FPI to furnish its cost history (FPI Form 9, Production Order and Cost Sheet) for the most recently completed contract(s) for the item (if none, for the most comparable item), along with identification of any apparent errors;

(iii) Obtain an independent cost/price analysis of purchases estimated to exceed \$200,000 and other actions as deemed appropriate (see 15.404-1(b)(90)(1)(ii) and 15.404-1(b)(90)(2)). Coordinate price or cost/price analyses (FAR/DFARS/DLAD 15.404-1(b) and (c))-3 performed on other large purchases with the cost and price analysis element;

(iv) Establish prenegotiation objectives as appropriate considering whether the objective is based on pricing data or on cost data plus a weighted guideline profit analysis (see DFARS 215.404-72 for non profit organizations);

(v) Negotiate with FPI to assure price reasonableness (see FAR 15.405(d)(90), and that the price does not exceed the current market price. Elevate negotiation to higher levels of management as necessary;

(vi) Document the price reasonableness determination in the contract file; and

(vii) Refer instances of unreasonable price which cannot be corrected to a higher authority in accordance with FAR/DLAD 15.405(d)(90). Include a price survey of other potential suppliers and a recommendation concerning whether a clearance request to purchase the item competitively is warranted and needed (FAR 8.605 and 8.606).

(a)(92) When the price comparison involves Government-furnished material or property (GFM or GFP), differences in transportation costs for the GFM or GFP shall be considered. Also consider differences in Government transportation costs of end items to the same destination points and any variations in the percentages of GFM usage and/or operating and maintenance costs of GFP.

8.604 Ordering procedures.

(b)(90) Contracts and orders to FPI shall be on an f.o.b. origin basis unless otherwise specified.

(c)(90) Ceiling priced awards.

(i) The clause at 52.208-9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Contract/Order, may be utilized only if (i) the contract/order will be issued to FPI at a fair and reasonable price that does not exceed the estimated current market price; (ii) the contracting officer completes action specified in 8.602(a)(91)(vii); and (iii) the chief of the contracting office determines in writing that ordering the urgently needed Schedule item cannot be further delayed and approves such award.

(ii) After issuing a contract/order containing the clause at 52.208-9000, the contracting officer shall brief the chief of the contracting office or designee of efforts to reach an agreement as to the current market price reduction applicable thereto. Agreements reached shall be confirmed by a revision to the contract/order stating the applicable price and removing the clause at 52.208-9000.

(iii) Efforts to obtain agreement may continue up to the time of inspection and acceptance of the first delivery. If agreement has not been reached by that time, the case shall be submitted by the chief of the contracting office (not delegable, except that the Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation) to HQ DLA, ATTN: **DLSC-PPB** as unresolvable and shall contain a detailed explanation of the factors used in determining the current market price and/or reasonable price which were not acceptable to the FPI.

8.604-90 Pricing policies for awards to Federal Prison Industries, Inc. (FPI).

(a)(1) Prices in awards to FPI for the partial or total quantity of an acquisition shall not exceed current market prices.

(2) On acquisitions involving multiple awards to both commercial contractors and to FPI of a mandatory item, the current market price will be a price considered by the contracting officer to reflect current market levels, but in no event a unit price higher than the highest award price made on the unrestricted portion adjusted for applicable cost factors, unless it is determined that the price was the result of a distressed bid, bidder's mistake, or inflated because of Department of Defense requirements. In awards involving multiple destinations, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award. The term "unrestricted" as used in this part refers to the portion of the acquisition not purchased from FPI, whether or not a small business set-aside has been made.

(3) When a contract action involves allotment to FPI of the entire quantity of the required item and current market quotations are not available, prior contract prices (adjusted to reflect changes in market prices of components since the last contract and differences in any other cost factors, e.g., labor, operating supplies, employee fringe benefits) shall be used as the basis for determining the current market price.

(4) Awards to FPI shall be on a free on board (f.o.b.) origin basis unless otherwise specified.

(5) Prices for FPI contracts shall be rounded off to the nearest mil.

(b) The cost of transportation of Government furnished property to both FPI and to commercial contractors shall be excluded. Differences in Government transportation costs of end items to the same destination point under FPI award and under awards to commercial contractors shall be included. Also, variation in the cost of Government furnished property, based on stated percentages of usage of Government-furnished property allowances, shall be included.

(c) Firm delivery orders shall be given to FPI promptly upon determination of the quantity to be awarded FPI. The following procedures are to be utilized in determining prices to be included on these delivery orders:

(1) When a concurrent commercial contract is being made, the price quoted by FPI shall be cited on the delivery order and the clause at 52.208-9000 shall be included in the order. In the event the current market price determined by the contracting officer under the "unrestricted" acquisition is lower than the quoted FPI price, adjustment shall be made to the lower price; provided, however, that in the time elapsed between the delivery order to FPI and the opening date on the "unrestricted" portion, there has been no significant change in market conditions. Should there have been a significant change in market conditions, the current market price for an FPI order will be determined under the provisions of subparagraph (a)(3), above.

(2) When the circumstances described in subparagraph (a)(3) above exist, immediate action shall be taken to determine the current market price. Should that price be lower than the quoted price, prompt contact shall be made by the most expeditious means with the FPI and the circumstances and factors used in the determination explained. Should an agreement not be reached as to the current market price within 5 consecutive days from the date of contact, the order shall be promptly issued on the basis of the current market price determined by the contracting officer, and the clause set forth at 52.208-9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Delivery Orders, shall be included on the FPI delivery order.

(3) After issuance of a delivery order containing the clause at 52.208-9000, every effort will be made by the contracting officer to reach an agreement as to the current market price applicable to the order. Agreements reached shall be confirmed by a revision to the delivery order stating the price applicable to the order, and rescission of the clause at 52.208-9000.

(4) Efforts to obtain agreement, to include exchange of data on which the current market price was based, may continue up to the time of inspection and acceptance of the first delivery. If agreement *is* not reached by that time, the case shall be submitted to HQ DLA, ATTN: **DLSC-PPB**, as unresolvable, and shall contain a detailed explanation of the factors determining the current market price which was not acceptable to the FPI.

8.605 Clearances.

(a)(2) **Waiver procedures and a waiver form can be found at internet address: www.unicor.gov/unicor/waiver.html. The mail address for waiver requests is:**

UNICOR Customer Service Center

P.O. Box 13640
Lexington, KY 40583-3640

(a)(90) To expedite the determination of FPI's capability and capacity to produce an item, a cooperative interface should be established between FPI's staff and Center technical staff.

(91) See 7.104 for guidance on industrial preparedness planning in connection with requirements that are being considered as an item of supply for FPI.

(c)(90) Use of the alternative dispute resolution process established by FPI should be considered whenever a clearance is denied. Waiver appeal request forms, at internet address: www.unicor.gov/unicor/appeal.html, may be addressed as follows, with an information copy provided the local SADB: Ombudsman

Federal Prison Industries
400 First Street NW
Washington, D.C. 20534

The Ombudsman may also be contacted at telephone: (202)305-3515; FAX: (202)305-7340; or email: jhynson@central.unicor.gov.

SUBPART 8.7 - ACQUISITION FROM **NONPROFIT AGENCIES EMPLOYING
PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

8.702 General.

(90) **It is** DLA policy **not only** to cooperate fully with the Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), its Central Nonprofit Agencies (CNAs) (**namely**, the National Industries for the Blind (NIB) and **NISH - formerly**, the National Industries for the Severely Handicapped), **and the individual nonprofit agencies (previously known as workshops and/or work centers) in accordance with statutory mandates, but also to provide the maximum practicable opportunity by which these Javits-Wagner-O'Day Act (JWOD) entities may become full partners in DLA's reengineered business processes at either the prime or subcontract level.**

(91) Contractor participation in a program of support for JWOD entities shall be the focus of an evaluation factor to be included in solicitations or other announcements for contracting arrangements which use source selection procedures. The contracting officer shall use an evaluation factor encouraging the maximum practicable use of JWOD entities as subcontractors (i.e., beyond statutorily mandated use of these entities by prime contractors; see FAR 8.001(c)). This factor shall apply to all source selections where the resultant contract is expected to exceed \$500,000, unless omission is approved by the chief of the contracting office. (Inclusion of this coverage in solicitations below \$500,000, though optional, is encouraged in all appropriate circumstances.) Proposals that demonstrate a strong commitment to affording JWOD entities a real opportunity to participate in the Government contracting arena, including prime vendor and virtual prime vendor arrangements, shall be rated more favorably than those that demonstrate little or no such commitment. See 15.304(c)(91).

(i) The contracting officer should consult with the local office of counsel prior to making this evaluation factor more important than other socioeconomic factors, to ensure that it does not displace any other factors required by statute or overall DoD policy.

(92) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its commitment to use of JWOD entities. Field elements of the Defense Contract Management Command shall be used to assist in assessing a contractor's compliance with these requirements.

(93) See 15.304(c)(91) for the prescription for use of solicitation provisions 52.215-9004, Javits-Wagner-O'Day Act Entity Proposal, and 52.215-9005, Javits-Wagner-O'Day Act Entity Support Evaluation.

(94) For applicable contract actions, the contracting officer shall provide incentives for prime contractors to subcontract with JWOD entities, even when they are not statutorily obligated to do so. These include:

(i) *evaluation of current or proposed participation in this program of support for JWOD as an independent factor (separate from any overall past performance evaluation factor) in source selection;*

(ii) *use of JWOD entities under previous contracts as part of the overall past performance evaluation factor in source selection;*

(iii) *evaluation of present performance regarding subcontracting with JWOD entities in determining placement of orders under multiple-award contracts; and/or*

(iv) *consideration of contractor present and past performance with reference to JWOD entities in the exercise of options for the follow-on years of long-term contracts.*

(95) *In order for determinations to be made regarding the efficacy and viability of this coverage, each contracting activity shall, ten days after the end of each fiscal quarter, submit a report to DLSC-PPP indicating the percent change in the extent of non-mandatory prime contractor support (i.e., percent of total subcontracting dollars) for JWOD entities.*

SUBPART 8.8 - ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.802 Policy.

(a) Policy and procedures for the acquisition or production of printing are contained in DLAI 5330.1, **Publications, Forms, Printing, Duplicating, Micropublishing, Office Copying, and Automated Information Management Programs.**

SUBPART 8.70 - COORDINATED ACQUISITION

8.7002 Assignment authority.

(a)(4) Exclusions to Defense Logistics Agency or General Services Administration Assignments by Agreement. All proposed agreements in accordance with DFARS 208.7002(a)(4) to permit a Military Service to acquire Military Service-managed items for which the estimated obligation of a one-time authorization will exceed \$100,000, or when the annual obligations are expected to exceed \$100,000 for a continuing authorization, shall be submitted for review and approval by HQ DLA, ATTN: **DLSC-PPP**, prior to consummation of the agreement. Continuing authorizations will not be granted for periods exceeding 12 months, notwithstanding the amount of estimated annual obligations. Requests shall be submitted by letter in sufficient detail to support the proposed agreement and shall be signed at a level no lower than the Chief of the Contracting Office.

8.7002-2 Requiring department responsibilities.

(a) Requisitions for metalworking machinery in FSG 34 should be submitted to DSCR-JHCA to determine availability of comparable idle assets and initiation of a purchase request. Local procurement is prohibited unless a local procurement authorization request has been submitted to and approved by DSCR-JHCA.

8.7004 Procedures.

8.7004-2 Acceptance by acquiring department.

(a) Upon receipt, MIPRs and other requests for non-DLA managed items should be routed directly to individuals responsible for procurement, as determined appropriate locally, for processing. Simultaneously, such requests will be routed for review by staff elements with corollary interest (operational, functional or policy-type offices having oversight responsibility for technical/quality issues), as necessary. The contracting officer or designated acceptance official shall request that reviewing elements furnish comments within 10 days. ***This must be done within 20 days of receipt of the MIPR, in order to meet the 30 day acceptance time-frame.*** The acceptance official will act as the team leader to obtain any necessary advice and counsel from local experts in order to accomplish the acquisition mission ***successfully.***

(90) Each procurement, whether covering a Military Service-managed or DLA-managed item, will take its priority position based on the factors surrounding the particular procurement and not on the type of item or origin of the purchase request.

8.7004-3 Use of advance MIPRs.

(f) **Actions in accordance with** DFARS 208.7004-3 may be taken by a DSC upon receipt of an Advance MIPR (or similar type purchase request), provided the purchase request contains a statement reading essentially as follows: "A firm requirement exists for the item(s) contained in this MIPR; purchase of the items will be supported by the commitment of funds which are expected to be made available (within the next *** days)/(prior to the end of this fiscal year)." Any other written advice from the requiring activity that the requirement is firm and that there is a reasonable expectation that funds will be made available for obligation purposes against the specific advance MIPR, may be accepted in lieu of a statement embodied in the MIPR. This advice will be used as the basis to proceed with the purchase action up to the point of award.

(1) Invitation for Bids (IFBs) or Request for Proposals (RFPs) issued on the basis of unfunded Advance MIPRs shall clearly state that no awards will be made until such time as funds become available for obligation purposes. (See FAR 32.703-2.)

(2) In instances such as those authorized herein, the requiring activity will be notified of the scheduled award date of the IFB or RFP and that, if funds are not made available by that date, the solicitation may be canceled. The scheduled award date may be extended at the discretion of the contracting office.

(3) If a requiring activity indicates that funds will not be forthcoming, the solicitation shall be canceled. All offerors shall be notified immediately of such cancellation (see FAR 14.404-3). If the solicitation is canceled prior to the solicitation opening or closing date, unopened offers shall be returned to offerors.

SUBPART 8.72 - INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING

8.7201 Definitions.

"Industrial mobilization" means the process of marshaling the industrial sector to provide goods and services, including construction, required to support military operations and the needs of the civil sector during domestic or national security emergencies. It includes the mobilization of materials, labor, capital, facilities, and contributory items and services. Industrial mobilization may include a short surge of production or repair capability, longer term expansion of production or repair capacity, or both. Mobilization activities may result in some disruption to the national economy.

"Production Planning Schedule (PPS)" means an agreement by an industrial firm to provide production capacity data, to maintain existing capacity data for a negotiated period of time, and to accept contracts for planned items upon the request of the Government. The agreements may either be a nonbinding memorandum of understanding or a binding contract/clause.

8.7202 General.

(a)(90) The DSCs shall make plans and take actions necessary to establish and maintain a responsive industrial base required to support peacetime, surge, or wartime contingency.

8.7203 Authority.

(b)(90) In the event of a national emergency or regional contingency, and if selective production acceleration/expansion of the current planned producer base is required, the Executive Director, Procurement Management shall notify the DSCs regarding availability and use of appropriate emergency contracting authorities. This includes expediting contracting actions through use of existing valid clauses or the standby letter contracts contained in the Industrial Preparedness (IP) planning packages.

8.7204 Procedures.

8.7204-90 Industrial preparedness (IP) planning packages.

DSCs shall develop and maintain IP planning packages (IP plans and standby letter contracts) for planned items in order to respond quickly to a national emergency or contingency. IP planning staffs shall ensure that appropriate contracting personnel are familiar with the objectives of the Industrial Base Program and IP planning, and are aware of the existence and utility of the IP planning packages. These packages will contain as much additional information as is necessary to allow issuance of contractual documents, and tracking of production by personnel operating from Alternate Headquarters sites.

8.7204-91 Industrial preparedness (IP) plans.

IP plans shall be established and maintained for all planned items. DSCs shall ensure that plans include current data regarding item requirements, planned producers, production schedules, and production planning schedule (PPS) agreements. IP plans shall be updated or revised at least once every 2 years, or more frequently as changes warrant. Where IP plans are developed for similar items, consideration will be given to consolidating the requirements and production data for all the items scheduled with each planned producer into one IP plan. In the event a DSC desires to include classified data, HQ DLA, ATTN: **DLSC**-PON, shall be advised of the necessity for such data prior to its inclusion in the plan or IP package.

8.7204-92 Production Planning Schedule (PPS) agreements.

PPS agreements are used by the Government to obtain contractor commitment to: (1) update PPS data for prime and critical subcontractors, (2) provide access to records, manufacturing process data, plants, and facilities in order to verify data, (3) maintain existing production capacity for a negotiated period of time, and (4) expeditiously initiate production of the planned item in accordance with the production planning agreement if called upon in a national emergency or regional contingency.

8.7204-93 Alternate files maintenance.

Copies of each IP package shall be furnished to the DART and DOVER emergency file repositories by 15 October of each year. Appropriate mailing addresses can be found in the Field Activity Basic Emergency Plan (FABEP). DSCs should ensure these files are kept current.

8.7204-94 Implementing IP plans.

The exercise or issuance of a contractual instrument (option clause or standby letter contract) to implement IP plans in support of an emergency, will be, to the degree necessary, to support the emergency. The standby letter contract, maintained in the IP packages, will be used as appropriate, to expand the planned producer base to meet emergency demands. Attachments, such as specifications, should be readily available to be mailed with the contract. The format of a sample standby letter contract follows:

CONTRACT NO. _____

Sir/Madam:

This letter contract, upon acceptance by your firm, will constitute a contract on the terms and conditions stated herein and signifies the intention of the Defense Logistics Agency to enter into a firm fixed-price contract with you for the delivery of the supplies and performance of the services listed on the Production Planning Schedule (PPS) agreement, which was executed on _____ in furtherance of the Industrial Base Program.

Schedule of Supplies or Services.

The supplies and services to be furnished and the time and place of delivery are as follows:

Contract for _____.

Specification Number _____.

Appropriation and other Administrative Data.

The supplies and services to be obtained under this letter contract are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of _____ same.

F.O.B. _____.

Execution, Commencement of Work, and Priority Rating.

The Contractor's acceptance of this order will be indicated by signing three copies and returning the signed copies to the contracting officer not later than _____. Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including acquisition of necessary materials. An appropriate priority

rating, in accordance with the Defense Priorities and Allocations System (DPAS) regulation, and DoDI 4400.1, Priorities and Allocations - Delegation of DO and DX Priorities and Allocations, Authorities, Rescheduling of Deliveries and Continuance of Related Manuals, will be assigned to this letter contract (FAR **Subpart 11.6** and DFARS Subpart **211.6**).

Priority Rating

DO or DX _____ (appropriate program code symbol). Certified for national defense use under the Regulation.

Definitization. *The clause at DFARS 252.217-7027, Contract Definitization (FEB 1996), is incorporated by reference, with the following inserts:*

- (1) In paragraph (a), first sentence following "A" _____ (insert specific type of contract action).
- (2) In paragraph (a), third sentence following "a" _____ (insert type of proposal; e.g., fixed-price or cost-fee).
- (3) In paragraph (b), following "follows" (insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data):

- (4) In paragraph(d), following "negotiated" _____ (insert "cost/price ceiling" or "firm-fixed price")
- (5) In paragraph (d), following "exceed" _____ (insert the not-to-exceed amount)

(End of clause)

Limitation of Government Liability. *The clause at FAR 52.216-24 Limitation of Government Liability (APR 1984), is incorporated by reference, with the following inserts:*

- (1) In paragraph (a), following "exceeding" _____ (insert dollar amount)
- (2) In paragraph (b), following "is" _____ (insert dollar amount).

(End of clause)

Unless otherwise provided herein, no progress payment to the contractor will be made under this contract.

The enclosed forms, with the exception of enclosure(s) _____ and clause(s) _____, are hereby incorporated into this letter contract, which is entered into pursuant to 10 U.S.C. 2304(c)(3) and any required justification that has been prepared.

Sincerely,

CONTRACTING OFFICER

Accepted (date) _____

Contractor _____
(Name & Official Title) Signature

PART 9

CONTRACTOR QUALIFICATIONS

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SUBPART 9.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

9.104-1 General standards.

(c)(90) Assuring that contracts are awarded to responsible prospective contractors necessitates the maintenance of contractor performance history and development of criteria for its use. Occasional quality deficiencies in contractor performance may be unavoidable, but if the defects are of a critical or repetitive nature and the contractor is not amenable to taking corrective action, such circumstances, may constitute support for finding a prospective contractor nonresponsible for award of contracts. Results, both positive and negative, from the System for the Analysis of Laboratory Testing (SALT) program, and other applicable quality history records, such as those from the Quality Evaluation Program (QEP) and from the Customer Depot Complaint System (CDCS), should be included in the contracting officer's determination and documentation of contractor responsibility. Contractor quality performance records will not be limited to product quality deficiencies, but also will include discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and similar discrepancies. Individual and summary records of actions taken will be maintained for review by management. If there are overriding reasons for awarding a contract to a supplier who has an unsatisfactory quality history, the contract file will be documented accordingly, and a Quality Assurance Letter of Instruction (QALI) shall be submitted to the activity responsible for Government acquisition quality assurance at source or destination.

(c)(91) Contracting offices will maintain appropriate documentation to facilitate assessment of contractor's recent delivery performance. Contracting personnel should utilize performance data on both currently active and recently closed awards (if available) in responsibility determinations and when considering contractors for placement on the DLA Contractor Alert List (CAL). Absent identifiable positive corrective action, poor past performance indicates poor future performance. Documentation

of contractor-caused delinquencies should serve as sufficient evidence to substantiate a nonresponsibility determination. (For procedural consequences of that determination with regard to small businesses, see, generally, FAR 19.6 and DFARS 219.6.) A supplier's repeated refusal to perform purchase orders issued in accordance with small purchase procedures may also be used as a basis for not awarding future contracts. Since inaccuracies in delivery data may occur, performance histories should be reviewed and furnished to the contractor before serious actions are taken. Overall delivery performance data shall be based on ship dates not receipt dates, due to problems in obtaining timely receipt data.

(g)(90) Standards for drugs. The Food and Drug Administration (FDA) has cognizance of all quality aspects of certain medical items (predominantly drugs) in accordance with the DoD-FDA Interagency Agreement on Drugs, dated 17 December 1975. At the request of **DSCP**, FDA will review the capability of a supplier to produce drugs and biologics of an appropriate quality whenever acquisition by **DSCP** of such an item is pending. It is within the discretion of the contracting officer to rely upon FDA conclusions regarding the capability of such offerors to meet required quality standards. A determination by FDA of unsatisfactory quality based on regulatory action shall necessitate a mandatory rejection of the offer by the contracting officer.

(90) The "Defense Logistics Agency Contractor Alert List" (CAL) is a monthly listing of suppliers who may require special evaluation before a determination of responsibility can be made. The list is provided to contracting offices by the Defense Contract Management District East (DCMDE) based on input from all Defense Contract Management Districts (DCMDs) and other contracting offices. Suppliers are added to the list when they are recommended for a preaward survey (PAS) by a contract administration office (CAO) for a particular reason. Contracting officers shall consider the DLA CAL as they would other similar data related to contractor performance. Appearance on the list (or any other indication of questionable prior performance, as set forth in 9.106-1(a)(90)(1) through (9)) does not mean a supplier is nonresponsible, but it puts the contracting officer on notice to consider carefully and deliberately the need for additional steps in making a responsibility determination in individual cases. (Any questions pertaining specifically to the Alert data should be directed to the PAS monitor at the CAO that has cognizance over the contractor involved, rather than to the contracting officer.)

9.105 Procedures.

9.105-2 Determinations and documentation.

(b) Support documentation. If a preaward survey is not obtained on a proposed award exceeding \$100,000, the contracting officer shall include in the contract file a memorandum explaining the basis for the determination of responsibility, addressing each of the applicable standards in FAR 9.104. When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance where the preaward survey report recommendation is not followed, the case must be reviewed and concurred in by the chief of the contracting office and at DSCP by the Commodity Business Unit Chiefs.

The contracting officer shall provide written notice to the surveying activity that performed the preaward survey of the reason for not following the preaward survey recommendation.

9.106-1 Conditions for preaward surveys.

(a)(90) Although a formal PAS is not normally requested for acquisitions valued at \$100,000 or less, there are circumstances which justify conducting a PAS (formal or informal), regardless of the dollar value of the acquisition under consideration. (An informal PAS is one in which the contracting officer's request for information is able to be fulfilled by a phone call to the CAO component, and may not necessitate contacting the firm or individual in question. A formal PAS, on the other hand, requires, at a minimum, the CAO PAS monitor to conduct a telephone survey, and may require one or more site visits to the prospective contractor's location. A formal PAS always incorporates an informal survey.) Because the survey is the primary means by which the responsibility of some contractors can be determined, its performance is strongly recommended on a prospective contractor (manufacturer or nonmanufacturer) that:

(1) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past 3 years (or other locally determined time period);

(2) Is (to the extent determinable from local records) a first-time Government contractor, or has had a performance break from Government business of 3 or more years' duration (or other locally determined time period);

(3) Is undergoing or has undergone reorganization under bankruptcy laws within the past 3 years (or other locally-determined time period);

(4) Has been terminated within the past 3 years (or other locally determined time period) for default;

(5) Has negative quality records (PQDRs, RODs, etc.) in the Quality Evaluation Program (QEP), is on the Contractor Alert List (CAL), has a poor **Product Verification Record (PVR) as indicated by ICP PVR**, or is otherwise known to the contracting officer to have a poor or marginal performance history;

(6) Has, within the past year (or other locally-determined time period), received a negative PAS for any item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased;

(7) Has failed to liquidate indebtedness to DLA (the extent of the indebtedness that would normally dictate a PAS shall be determined locally);

(8) Is a transferee in interest of a former Government contractor; or

(9) Is the subject of information that is not sufficient on which to base a responsibility determination, or is a current contractor about whom the historical capability data, in terms of productive capacity, quality assurance, financial ability, etc., is unavailable to the contracting officer or is inconclusive.

(a)(91) When an offer received from a prospective contractor described in (a)(90)(1) through (9) above is proposed for award, and the contracting officer decides that actual performance of the PAS is in the best interests of the Government, the contracting officer shall request the survey, and provide the rationale for that request in the "Remarks" section of the SF 1403, Pre-award Survey of Prospective Contractor (General). When a PAS is requested with respect to an offeror described in (a)(90)(1) above, the contracting officer shall identify integrity as a factor about which information is needed and shall ask that the PAS team specifically identify the corrective actions undertaken by the prospective contractor to address the problems that resulted in the contractor's being listed on the GSA List of Parties Excluded from Federal Procurement Programs.

(a)(92) Final determination of the appropriateness of conducting a PAS always rests with the contracting officer. For that reason, this section does not mandate survey performance. Nevertheless, use of the survey is strongly encouraged for those prospective contractors described in (a)(90)(1) through (9) above. If a contracting officer decides not to request a PAS under any of these circumstances, the contracting officer shall document the contract file with the basis for that decision (see 9.105-2).

9.106-2 Requests for preaward surveys.

(90) Generally, a preaward survey shall be requested only when award is contemplated to a firm from which a bid or proposal has been received. However, a preaward survey may be requested of the facilities or firms supplying perishable food items before receipt of a bid or proposal when the time between opening/closing and award would not be sufficient for a survey following receipt of an offer. Concurrent requests for preaward surveys may be made in emergency situations and/or when multiple awards are contemplated. The need to request concurrent preaward surveys will depend upon the circumstances of the individual acquisition. Contracting officers shall obtain the agreement of the appropriate CAO preaward survey monitor prior to the submission of such requests. Although FAR 9.106-2(d) specifies a norm of 7 working days for conducting preaward surveys, except for FDA determinations, contracting offices should provide for the maximum allowable time, particularly if a negative finding is anticipated or a secondary survey will be required. When the contracting office needs a response in less than 7 working days, the surveying activity should be provided with the reason for the expedited survey. Surveying activities should notify contracting officers of survey results by telephone or electronically transmitted message on the day the survey is mailed.

(a) Additional factors would include the need for special facilities (e.g., tools, machines, test facilities) required to produce the item. Failure to liquidate indebtedness indicates a lack of responsibility. Therefore, if it is proposed to

contract with firms indebted to DLA, and the proposed contract would otherwise require a preaward survey, an annotation should be made in the "Remarks" section of the SF 1403.

(a)(ii) Evaluation of a contractor as a planned producer will not affect the outcome of the PAS for other than industrial preparedness purposes. Any prospective contractor receiving a negative PAS for production or quality assurance capability with regard to an existing/potential Industrial Preparedness Planning List (IPPL) item should neither be solicited nor enrolled as a planned producer.

(e) Contracting officers shall restrict their requests for preaward survey information to that which is not already available to the contracting office. The contracting officer must determine the scope of the preaward survey to be performed. (Preaward survey requests on sole source suppliers will be limited to partial surveys.) The only factors to be investigated (e.g., production backlog, finances, and quality history) are those which actually affect or indicate the contractor's ability to perform under the contract and for which the contracting officer does not have sufficient knowledge to make a responsibility determination.

(i) When limited information is required, it can often be obtained through telephonic contact with the PAS monitor at the cognizant contract administration office (CAO), precluding the administrative effort associated with a formal PAS request.

(ii) For items assigned to the U.S. Department of Agriculture, the U.S. Department of Commerce, and/or the U.S. Army Veterinary Corps for source inspection, the quality assurance personnel representing the contracting officer, and other military agencies, as deemed necessary, will be requested to participate in the PAS, and their comments will be included in the quality assurance portion of the report.

9.106-3 Interagency preaward surveys.

(b) The list shall be retained with the contract file.

9.106-90 DLA preaward survey monitors.

(a) Each DSC will designate an organizational element to serve as the focal point for preaward surveys and to be the principal point of contact with PAS monitors at surveying activities. The focal point will review PAS requests for completeness and accuracy before forwarding these requests to surveying activities. Upon receipt of completed preaward surveys, the focal point will review the reports and shall consult with available technicians in particular areas, such as Cost and Price Analysts, when there are doubts as to the validity of the information in the survey report. If the PAS contains information questioning a company's quality control, then the survey report shall be reviewed with the DSC Quality Assurance personnel.

(b) A register of all PAS requests and responses, both formal and informal, shall be maintained in a current status by the PAS monitor at each DSC. As a minimum, this register shall include:

(1) PAS or FDA number (to provide an audit trail).

(2) Date of Preaward Survey request. Note: If the request is made by phone and a written report is requested, the SF 1403 must follow by mail on the same day as the telephone request.

(3) Date completed report to be returned (Block 10). (This is the date by which the surveying activity is to mail the completed report.)

(4) Extended date when extension is granted.

(5) Date telephonic or electronically transmitted report is received by DSC.

(6) Date Preaward Survey report is received by DSC.

(7) Prospective contractor's name and location.

(8) Surveying activity's location.

(9) Solicitation number (RFP/IFB/PR Number).

(10) Buyer or contracting officer name.

- (11) Dollar amount of proposed award.
- (12) Brief identification of item to be acquired.
- (13) Recommended action, whether "A," "P," or "N" (Affirmative, Partial, or Negative).
- (14) Remarks. Indicate whether recommendation was overturned, and add any other pertinent comments. (See 9.105-2(b).)
- (15) Date of award, if any.

9.106-91 Capability surveys for workshops for the blind and other severely handicapped.

(a) The contracting office, upon request from the Committee for Purchase from People who are Blind or Severely Disabled, shall request a capability survey to determine the capability of the workshop(s) to produce specific items being considered for addition to the Procurement List.

(b) The contracting office, when requesting a capability survey, shall make the request on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General). The contracting office should emphasize factors concerned primarily with production capabilities. When a capability survey is being requested, the form shall clearly indicate the request is for a "Capability Survey" only.

(c) The contracting office shall forward requests for capability surveys to the appropriate office, in accordance with DFARS 209.106-2. The contracting office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Defense Contract Management Command Industrial Support Manual, Section 1-102(i).

SUBPART 9.2 - QUALIFICATIONS REQUIREMENTS

9.202 Policy.

(a)(1) The chief of the contracting office shall provide to HQ DLA, ATTN: **DLSC**-POA and **DLSC**-LXE, a brief summary of the proposed plan to establish a qualification requirement. Approval by HQ DLA is not required, unless HQ DLA requests a review of the plan. The chief of the contracting office shall approve the establishment of a qualification requirement, subject to the requirements of FAR Subpart 9.2 and after considering any comments of the activity Competition Advocate and the activity Commercial Advocate. When a qualification requirement is proposed for application to an item described by a document that is subject to the Defense Standardization Program, the procedures in DoD 4120.3-M, Appendix B, apply, including the requirement for OASD approval.

SUBPART 9.3 - FIRST ARTICLE TESTING AND APPROVAL

9.306 Solicitation requirements.

(e) Good technical judgment must be applied in determining the total number of first article units to be tested for a given contract. This must be a sufficient quantity to demonstrate clearly that materials used, manufacturing processes employed, workmanship standards utilized, and the method employed for the control of quality are capable of producing an item which meets all the contract requirements.

(f) Whenever a first article requirement is waived for a contractor that previously provided the same or a similar item, the contract shall contain a commensurately shorter delivery schedule than if the requirement had not been waived. FAR prevents that difference in delivery schedule from being used as an evaluation factor for award; any additional performance accelerated under a Delivery Evaluation Factor or similar program may be considered in best-value source selections. The contracting officer should pursue consideration from the contractor, or contract price adjustment for separately priced first article testing requirement, in appropriate circumstances when a first article waiver is granted.

(h) To assist Government and contractor quality assurance personnel during the production phase, contracting officers shall ensure that the contract requires the contractor to hold at least one approved first article unit at the production facility until all production quantities have been produced and accepted. This first article unit can be referred to as a production or manufacturing standard and baseline for examination when defects are reported on delivered material or problems are uncovered during production.

(90) Whenever first article testing is to be performed, identify in the contract the sequence of processes, tests, etc.; the number of units to be tested; the data required; and the conformance criteria for each requirement specified. Collaboration with the Military Services may be necessary to identify these requirements. Refer to applicable paragraphs in the specifications, as appropriate. The contracting officer shall refer first article test reports to the quality element for evaluation and recommendations.

(91) The contracting officer shall document the official contract file, clearly showing the acceptance/rejection criteria used to approve or disapprove the first article. First articles shall be disapproved whenever nonconforming parts and/or material are used in the manufacture of the first article. Nonconformances must be corrected before materials or components for production are purchased by the contractor.

9.307 Government administrative procedures.

(b) Contracting officers shall not grant conditional approval of first articles for DLA contracts without specific approval at a level higher than the contracting officer.

(90) The contracting officer, subject to the recommendation of the ICP quality assurance specialist, shall delegate the authority to accept either first article test results (documentation) or the tested items themselves to the administrative contracting officer (ACO) in consultation with the DCMC quality assurance representative and the staff specialist/engineer, except when Engineering Support Activities retain acceptance authority or the ICP has specific reasons to withhold that authority. Such delegation shall be accomplished as provided in FAR 42.202(c).

SUBPART 9.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.404 Parties Excluded from Procurement Programs.

(c)(1) The Special Assistant for Contracting Integrity (SACI), General Counsel, HQ DLA, shall furnish to the General Services Administration all additions, deletions, or modifications to the list of Parties Excluded from Federal Procurement and Nonprocurement Programs resulting from DLA action.

(c)(4) Departmental records. The records required by FAR 9.404(c)(4) are maintained for DLA by the SACI.

(c)(90) Each DLA activity shall obtain and have available the most recent edition of the list of Parties Excluded from Federal Procurement and Nonprocurement Programs. Consult the list before completing any contracting action identified in FAR 9.405, 9.405-1(b), or 9.405-2.

9.405 Effect of listing.

(a) In order to take one of the contracting actions identified in FAR 9.405, 9.405-1(b), or 9.405-2, the activity commander shall forward a written request, including supporting information and rationale, to the SACI via the local counsel for a determination that there is a compelling reason to make an exception. The proposed contracting action may not be taken until an exception is granted in writing by the SACI.

(90) Contracting actions concerning contractors recommended for debarment or suspension.

(a) From the time a report recommending debarment or suspension is forwarded to the General Counsel, until determination is made whether to initiate debarment or suspension action, the recommending activity and any other affected DLA activity that is aware of the recommendation will coordinate with the General Counsel, before taking any of the following actions with respect to the subject contractor:

(1) Awarding a contract, issuing a purchase order, or entering the contractor's name in an automated purchase system.

(2) Renewing or otherwise extending an existing contract or subcontract.

(3) Consenting to or approving a subcontract to be awarded by or to the contractor.

(4) Authorizing novation of a contract or agreeing to change of name for the contractor.

(b) Upon submission to the General Counsel of a report recommending debarment or suspension, contracting officers, in coordination with local counsel, will consider removing the subject contractor's name from **all automated purchase systems**. If the removal is accomplished, one contracting officer at each affected activity shall notify the contractor that the contractor has been removed from **the systems** and a report recommending the contractor's suspension or debarment has been submitted to HQ DLA. The notice shall include a brief summary of the reasons for the recommendation. Through Counsel at the activity, each affected activity shall notify the General Counsel, by telephone when the contractor is removed from **automated purchase systems**. For **simplified acquisition** purchase procedures, for other than **automated purchase systems** see subparagraph (c)(3) below.

(c) Prior to a determination whether to suspend or debar a contractor recommended for debarment or suspension, if the subject contractor submits an offer that is otherwise in line for an award, the cognizant contracting officer will review the fact sheet furnished pursuant to 9.406-3(a)(ii)(90)(A) below and any other supporting data that the contracting officer deems relevant.

(1) After review of the fact sheet and supporting data, if the contracting officer proposes to award the contract to the subject contractor, the contracting officer, through local counsel, shall coordinate with the General Counsel, prior to making the award.

(2) After review of the fact sheet and supporting data, if the contracting officer determines that the contractor is not responsible, the contracting officer shall notify the contractor of the determination in writing, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA, and provide to the contractor a brief summary of the reasons for the recommendation and for the determination of nonresponsibility. In addition:

(i) If the contractor is a large business, the contracting officer shall proceed with award to the next low responsible offeror that has submitted a responsive bid or technically acceptable proposal.

(ii) If the contractor is a small business concern, the contracting officer shall include with the FAR 19.602-1(a)(2) referral to the Small Business Administration a copy of all elements of the report required by DFARS 209.406-3(a)(ii) and 9.406-3(a)(ii)(90) of this directive that would be releasable directly to the contractor.

(3) If a contractor inquires as to the status of a quote it submitted under simplified acquisition procedures other than **by automated purchase systems**, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA whenever the facts supporting the recommendation are the basis for rejecting the contractor's quotation. Provide the contractor a brief summary of the reasons for the recommendation.

(4) The contracting officer, through local Counsel, shall coordinate by telephone with the General Counsel, actions to be taken under subparagraphs (2) and (3) above.

(91) Review of files for potential claims and additional remedies.

(a) When a DLA contracting office learns that a contractor has been suspended, debarred or proposed for debarment, or a report has been submitted pursuant to DFARS 209.406-3(a) recommending debarment or suspension, the activity's records shall be reviewed to determine whether the activity has current or has had past contractual relationships with the contractor or its affiliates and, if so, whether the Government may have any basis pursuant to those relationships for recovery of damages from, or other claims against, the contractor.

(b) If a DLA activity determines that there may be such a basis, information stating the factual basis in as much detail as practical shall be forwarded promptly to the General Counsel.

9.405-1 Continuation of current contracts.

(90) Authorization for novation of a contract or change of name agreement held by a contractor debarred or suspended by any Federal executive agency or proposed for debarment by any DoD component shall be coordinated with the DLA SACI through local counsel, prior to such authorization.

9.406 Debarment.

9.406-3 Procedures.

(a)(i)(90) Reports based on indictments or convictions.

(A) Submit reports recommending suspension based upon an indictment or criminal information to the General Counsel, within 2 weeks of the date of indictment or information and include a copy of the indictment (signed, with docket number and date).

(B) For purposes of recommending debarment based on a conviction, submit the report within 2 weeks of the date of sentencing. Include a copy of the judgment/conviction order.

(a)(ii)(A) The activity contact point shall be an attorney in the Counsel's office of the DLA activity submitting the report.

(a)(ii)(90) In addition to the information required by DFARS 209.406-3(a)(ii), include the following:

(A) A brief fact sheet setting forth the essential reasons for the recommendation to suspend or debar.

(B) The name of the investigative agency, or agencies, if any, that investigated either the facts reflected in the report or other aspects of the contractor's business dealings with the Government.

(C) Available Dun & Bradstreet reports on the subject contractor, including the Dun & Bradstreet Government Activity Report, and the DUNS (Dun & Bradstreet) number of the subject contractor, if available.

(91) When the basis for debarment or suspension is nonperformance, untimely performance, unsatisfactory quality or production performance, noncompliance with contract terms, or any other cause under FAR 9.406-2(b), include an explanation of previous contract steps taken to protect the Government's interest (e.g., termination for default, determinations of nonresponsibility) or an explanation of why such steps were not taken.

(92) When preparing a report pursuant to DFARS 209.406-3(a), contact the cognizant DCMD(s) to obtain the information required by DFARS 209.406-3(a)(ii)(F). If DCMD records reflect contracts with other DLA contracting offices, notify those other DLA contracting offices of the proposed recommendation and furnish them and the DCMD(s) the information upon which the report will be based. State in the report that this intra-agency coordination has been accomplished, list the DLA activities contacted, and summarize the information exchanged.

(a)(iii) The report required by DFARS 209.406-3(a) shall be signed by the contracting officer and submitted in duplicate by the Commander of the PLFA recommending activity to the General Counsel, HQ DLA. Designate the report "For Official Use Only," unless the contents of the report warrant a security classification.

(a)(iii)(90) When a report recommending debarment or suspension is forwarded to the General Counsel, distribute copies of the fact sheet described in 9.406-3(a)(ii)(90)(A) to contracting personnel at the recommending activity assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other DLA activities identified pursuant to (ii)(92), above.

(c)(6) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the debarred source for the period of time specified in 9.106-1(a)(1) after the debarment is no longer in effect (see 15.605-90).

9.406-90 Procedures for debarments based on poor performance.

(a) Policy. Debarment reflects a business judgment about a contractor's trustworthiness, commitment, and capability to successfully perform Government contracts. The debarment regulations recognize two general bases for debarment -- fraudulent or other seriously improper conduct suggesting that a contractor cannot be trusted to fulfill its contractual obligations and poor performance suggesting an inability to fulfill contractual obligations. Responsibility for managing the DLA Fraud Program has been assigned to the General Counsel. Thus, in those instances where suspected criminal misconduct provides the basis for debarment action, the responsibility for initiating action to ensure that a debarment report is forwarded to HQ DLA for further action lies primarily with local counsel. Conversely, where poor performance is to be relied upon as a basis for debarment in accordance with FAR 9.406-2(b), the responsibility for ensuring that action is taken to initiate debarment proceedings lies primarily with the cognizant contracting officer.

(b) Referral. The contracting officer, together with the other members of the contracting team, must initiate timely, effective action to ensure that the Government's business interests are protected when a contractor's action or inaction threatens successful contract performance. The contracting officer is responsible for ensuring that contracts are awarded only to responsible contractors with a high likelihood of being able to successfully perform in accordance with contract terms and conditions. Contracting officers are also responsible for making effective use of available contract remedies, including action to terminate contracts for default and recover for damages suffered, and pursuing extra-contractual remedies, such as debarment of poor performers, where the Government's business interests are at risk. In accordance with the procedures contained in subparagraph (c) below, the cognizant contracting officer will refer to local counsel those instances of contractor nonperformance that are so serious as to justify consideration of possible debarment action.

(c) Decision-making process.

(1) Before referring a particular contractor to local counsel for possible preparation of a debarment report, the cognizant contracting officer must be able to document the poor performance which will form the basis for a debarment recommendation. The contracting officer must also be able to demonstrate why debarment is the only reasonable alternative available left to the Government. Efforts by the Government to protect its interests by less severe measures (e.g., changing the point of acceptance, suspension of progress payments or placing the contractor on the local contract award checklist) must be clearly identified. While debarment decisions are based on a determination of a contractor's present responsibility, detailed knowledge of that contractor's performance history and record including actions taken by the Government is critical to the debarring official's determination. Referrals to local counsel should include all current information necessary to support the business decision that is to be recommended to the DLA SACI. The contracting officer should be prepared to update the information provided once the debarment process is underway and to participate with local counsel in presenting the case to the DLA SACI.

(2) When referring a contractor to local counsel for consideration of a possible debarment recommendation on the basis of poor performance, the cognizant contracting officer shall provide:

(i) A clear identification of the contractor, including divisions, subsidiaries, and affiliates, and contractor employees, officers, and directors, specifically identifying the contractor personnel who have participated in the Government contracting process.

(ii) A detailed account of the contractor's current active contracts, recent, relevant performance history, and history of performance problems prompting the referral. While this detailed accounting of contracting performance will necessarily focus on contracts awarded by DLA, performance on other Government contracts must also be addressed. In this connection, the assigned contract administration office should be asked to provide information, as well as comments, on the action being considered.

(iii) The reasons identified for the contractor's poor performance and the action taken by the Government to protect its business interests.

(iv) A discussion of whether a debarment action directed toward a specific division, organizational element, or commodity would adequately protect the Government's interests.

(v) A discussion of the period of debarment to be recommended to the DLA SACI, supported by rationale that addresses the likelihood that the contractor will be able to take corrective actions necessary to successfully perform in the future.

9.407 Suspension.

9.407-3 Procedures.

(c)(4) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the suspended source for the period of time specified in 9.106-1(a)(90)(1) after the suspension is no longer in effect (see **15.304(c)(95)**).

PART 10

MARKET RESEARCH

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10.002 Procedures.

10.001 Policy.

(a)(2)(iii) Generally, DLA activities will not delay the instant acquisition to conduct market research when the estimated dollar value is less than the simplified acquisition threshold, unless the contracting officer determines it is cost-effective to do so.

10.002 Procedures.

(a)(90) "Market" as used in the term "market research" may be confined to trade in one product, or be a group of products, and may cover a locality, a region, the United States, or be worldwide.

(91) "Market research" as defined in FAR 2.101 and exemplified in FAR and DLAD 10.002 and in Chapter 12 of the Armed Services Pricing Manual (ASPM), Volume II, includes, but is not limited to, efforts by:

(1) Technical personnel to accomplish research and analysis in connection with developing specifications and purchase descriptions (see FAR 10.002(b)(2));

(2) Technical personnel to determine the availability of commercial products to meet the Government's functional requirements (see FAR Part 10);

(3) Supply personnel to identify techniques/actions to assure or enhance supply availability and the timing and quantities for economic purchases; and

(4) Contracting and competition advocate personnel to research and develop sources (see FAR and DLAD 6.101 and 7.102).

(b)(1) Market research and analysis also involves, but is not limited to, acquiring the information cited in Chapter 12 of the Armed Services Pricing Manual (ASPM), Volume II and the following:

(90) Trends in technology, materials utilization, and industry practice including manufacturing processes, economic order quantities, production lead times, and channels of distribution.

(91) Economic and price trends and conditions, market statistics and indicators, and major policies or seasonal considerations affecting supply, past demand analysis, future demand projections, and outlook for major product categories.

(92) Compatibility with economic production runs, economic buys, industry capacity (including variations in availability of such capacity), and industry interest.

(93) Industry marketing, commercial contracting, contract financing, and pricing practices,

(94) Potential impact of acquisitions on domestic and international markets.

(95) Impediments to effective competition.

(b)(2) Additional sources include:

(90) Academic institutions.

(91) Industry and trade associations.

(92) Business and financial periodicals, trade publications, statistical and financial service reports (e.g., Dun & Bradstreet, Thomas Register).

(93) State, county, and local governmental agencies.

(90) General. Market research to develop or enhance competition is normally conducted by buyers and competition advocate personnel, often with assistance from the local market research office, if existent. Such locally established offices should support the entire scope of local market research and analysis needs. Where a local market research office has not been established, assistance for specified market research may be requested from the local or other DLA operations research and economic analysis office responsible for providing such support.

(91) Requirements. To ensure that applicable market conditions are considered in the acquisition decision-making process, market conditions may need to be continually monitored, analyzed and forecasted (using appropriate economic theory, tools and techniques) to determine their potential impact on various elements of the acquisition plan (see FAR 7.105(b)(1)), as well as on mission performance.

(e)(90) Personnel responsible for maintaining the Contracting Technical Data File (CTDF) shall make the appropriate entries in the "COS" (Commercial Off-the-Shelf) field when items are identified as being commercial or noncommercial. **(See 12.102(a)(90))**. DLA activities shall establish appropriate procedures to ensure that the necessary information is provided to the personnel maintaining the CTDF.

PART 11
DESCRIBING AGENCY NEEDS

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(a)(1)(ii)(90) Agencies are responsible for determining their requirements and the best strategy for meeting those requirements. An agency's requirement is not overly restrictive of competition as long as the agency can show that its decisions are --

(A) Based on actual experience, engineering analysis, or similar rational bases; and

(B) Rationally related to ensuring its legitimate requirements will be met.

(91) To ensure that the Government's needs are met in the most effective manner, agencies must define their requirements in terms that --

(A) Take optimum advantage of distribution and support options, methods for assuring reliability, and other capabilities available in the marketplace that the agency determines appropriate for the type of item or service being acquired; and

(B) Exclude those items or services that cannot meet the agency's legitimate requirements.

SUBPART 11.1 - SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

11.103 Market acceptance.

(a) Approval authority for requiring offerors to demonstrate market acceptance pursuant to FAR 11.103(a) is delegated to the contracting officer. ***When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.***

(90) A market acceptance requirement is a requirement that an item must have performed in a certain way in a specified environment that approximates or reasonably relates to the agency's intended application. The use of market acceptance criteria is consistent with the definition of full and open competition in FAR Part 6 as it relates to agency needs. A market acceptance requirement may be used to establish either --

(i) A minimum threshold or performance that will be considered a demonstration that the item has been adequately market-tested or field-proven; or

(ii) An evaluation method that awards partial credit for items that meet part of the requirement.

(b)(90) Market research provides the information from which it can be determined whether previously-developed items exist that can meet the agency's needs and what methods are used in that marketplace to assure reliability. Then it must be shown, through a careful analysis of the intended application and the marketplace capabilities available, that the optimum strategy for meeting the Government's needs is to require items that have been field-proven in specified ways.

(b)(91) When an agency requires that an item must have achieved market acceptance, the agency must specify exactly what that means in the context of the particular acquisition. The meaning will vary widely, depending upon what benefit the agency is attempting to gain by using such a strategy.

(b)(92) When an agency's primary goal is to acquire the latest technology, other methods of assuring reliability are more appropriate than market acceptance. Particularly when acquiring items in a rapidly evolving technological field over a long-term contract, an agency will not be able to demonstrate that an item that is currently field-proven would be the best item for meeting the agency's needs several years from now.

(e) The preparing activity will maintain documentation that describes the technical aspects of the item and supports the market acceptance requirement.

(1) Some examples of the type of rationale that could support requiring a market-tested item include:

(90) Minimize design and engineering risk;

(91) Eliminate costly and time-consuming field-testing and debugging of complex items;

(92) Assure an item can be fielded quickly enough to meet an urgent requirement;

(93) Assure an established end item is routinely supported by spare and repair parts;

(94) Preclude untested or experimental units; or

(95) Assure compliance with Federal safety and environmental requirements.

(2) The market acceptance requirement may be whatever can reasonably be demonstrated --based on past experience, engineering analysis, market research and similar rational bases --to be an indicator that the item will meet the intended application. Some examples of market acceptance criteria include requirements that an item must --

(90) Have been announced to the public, indicating the manufacturer's commitment to produce the product;

(91) Be commercially available for delivery within a reasonable time;

(92) Be off-the-shelf, meaning that the products offered do not require substantial modification;

(93) Be in current production, meaning that the item is no longer in the design phase but is started on assembly line production with the expectation that such production will continue;

(94) Be state-of-the-art, meaning that the product is the offeror's latest version of that product;

(95) Have been previously sold to commercial or other customers, sometimes for a specified period of time or with a user base of a specified number;

(96) Have met specified reliability and performance requirements;

(97) Be supported by specified maintenance and logistics arrangements;

(98) Be the successor to a product having a specified history of sales and performance; or

(99) Meet some combinations of the above criteria.

SUBPART 11.2 - USING AND MAINTAINING REQUIREMENTS DOCUMENTS

11.201 Identification and availability of specifications.

(90) Contracting personnel are not authorized to make any change in the unit of issue on stock buys without approval from either technical or supply personnel in accordance with local procedures.

SUBPART 11.3 - ACQUIRING OTHER THAN NEW MATERIAL, FORMER GOVERNMENT SURPLUS PROPERTY, AND RESIDUAL INVENTORY

11.302 Solicitation provisions and contract clauses.

(90) The Technical and Quality Specialist in the Business Unit is responsible for determining the circumstances when offers of surplus material will only be evaluated to accommodate unique contingencies. The technical/quality specialist shall provide backup documentation for the contract file in sufficient detail to demonstrate that the restriction is necessary to satisfy the needs of the Government. Justifications may be applied on an individual or class basis. When offers of surplus material will only be evaluated to accommodate unique contingencies, the technical/quality specialist shall ensure that the following statement is included in the Technical Guidance Information (TGI) field: "Due to [insert reason(s), such as "the critical nature" or "need to maintain industrial base"] of [insert description of item(s)(class(es) of items, such as "gears," "Life Support", "Flight Safety Critical Aircraft Parts (FSCAP)", and/or "Individual Repair Parts Ordering Data (IRPOD)"] items, offers of surplus material will only be evaluated to accommodate unique contingencies, such as when the original equipment manufacturer is out of business, the aircraft/system is obsolete (no longer being manufactured), or the sole vendor or approved vendors do not respond." The contracting officer is responsible for including the statement in the PGI field, when applicable, as a notice in the solicitation. For automated solicitations, a statement may be included referring offerors of surplus material to a source of information where complete conditions for evaluation are detailed (e.g., "Offerors of Surplus Material - see EBB Sign On Instructions"). Buying activities shall develop procedures to ensure that documentation received separately from a corresponding automated offer is properly distributed to the buyer for timely evaluation.

Business units performing the contracting function shall ensure the above statement, when applicable, is included in the solicitation. For automated solicitations, a statement may be included referring offerors of surplus material to a source of information where complete conditions for evaluation are detailed (e.g., "Offerors of Surplus Material - see EBB Sign On Instructions").

When the **clause** at FAR 52.211-5 is used **and offers of surplus materials will be evaluated**, the clause at 52.211-9000, Surplus Material, **and the provision at 52.211-9003** shall also be used. **When the provision at 52.211-9003 is used, the contracting officer shall include a notice in the solicitation advising that the evaluation criteria stated in 52.211-9003 will apply to all offerors, including offerors of nonsurplus material. (For commercial items, the clauses at FAR 52.211-5 and DLAD 52.211-9000 and the provision at DLAD 52.211-9003 may be used but are not mandatory; however, contracting officers shall ensure material requirements are addressed in a manner appropriate to the circumstances and that the solicitation provides adequate information about how offers of surplus material will be evaluated.)** DSCs shall establish procedures such that they will

evaluate offers of surplus material when the savings meet the savings threshold stated in the provision, and there is a reasonable expectation that the offer of surplus material may be in line for award. In order to avoid the establishment of dual standards, when offers of surplus property are permitted, warranty provisions applied must be applied to all contractors whether manufacturers or dealers and whether or not surplus material is offered. Therefore, a warranty clause as prescribed in FAR Subpart 46.7 or DFARS Subpart 246.7 must also be incorporated in the solicitation whenever the above clauses are used and use of a warranty provision is desired.

(90) When the contracting officer considers it appropriate to obtain documentation to confirm that the market acceptance criteria have been met, in addition to any documentation that may be specified in the requirements document, the contracting office may use the provision at 52.211-9001, Market Acceptance.

SUBPART 11.4 - DELIVERY OR PERFORMANCE SCHEDULES

11.401 General.

Absent locally coordinated operating procedures, contracting personnel will not change production leadtimes or customer required delivery dates without prior coordination with the inventory manager and industrial specialist.

11.401-90 Extended contracting delays.

The contracting office shall immediately notify the item manager when extended delays in contract award are anticipated and, when possible, also advise of the length of delay in the proposed delivery schedule.

SUBPART 11.5 - LIQUIDATED DAMAGES

11.502 Policy.

(d) Recommendations concerning the remission of liquidated damages shall be transmitted to the General Counsel.

SUBPART 11.6 - PRIORITIES AND ALLOCATIONS

11.602 General.

(a)(90) Executive Order (E.O.) 12742 implements Section 468 of the Selective Service Act (SSA). It allows for placing orders for the prompt delivery of articles or materials in support of the Armed Forces. The E.O. provides that all regulations and delegations made under the Defense Production Act (DPA), which includes the Defense Priorities and Allocations System (DPAS) regulation, remain in effect. Therefore, whenever the DPA lapses, the DPAS will continue in effect under authority of the E.O. and the SSA as the basis for rating DoD contracts to insure preferential scheduling and priority treatment by contractors.

(c)(90) The rating authority continued in effect under E.O. 12742 also extends to food resources in support of troops in accordance with the Memorandum of Understanding between the Departments of Agriculture and Commerce and the determination made by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

11.603-90 Procedures for placement of contracts when normal solicitations fail.

(a) The following procedures, in consonance with the DPAS regulation (15 CFR 700), shall apply when industry fails to adequately respond to solicitations for supplies to support the Military Services as prescribed in FAR 11.603.

(1) Reserved.

(2) To be reasonably certain that the companies upon which rated orders are placed unilaterally may not legally reject the orders (see DPAS 15 CFR 700.13(b) and (c)) and to assure that the placement of a rated order is practicable, unilateral rated orders shall comply with the following:

A rated order shall not be issued unilaterally to a company when a reasonable doubt exists as to its capability to produce an item, or a like item, until a plant survey has been made by a Defense Contract Management Command (DCMC) field office and that office has determined that the company has the production capability, the financial capability,

and the facilities to produce the item. The refusal of a company to permit such a survey, however, shall not alone be the basis for issuing a rated order. The decision in such cases will be based on the best information obtainable by DCMC and the contracting office.

(3) The issuance of a unilateral rated order is a "forced" action which may generate complaints or objections from suppliers. Therefore, extreme caution is required to assure equitable distribution of the orders to selected individual firms. Within the limits prescribed in subparagraph (2) above, the quantity to be included in each rated order and the number of companies to be selected shall be determined in accordance with the following criteria:

(i) When a production line must be established to produce the specific item, the rated order quantity shall not be less than a minimum economical production run.

(ii) When the total contract requirement represents a minimum economical production run for only one (or a few) of the capable producers, the rated order(s) shall be issued to the company(ies) considered the most capable and on which the impact on production will be minimal.

(iii) When there are a large number of companies capable of producing the total required quantity, the most qualified companies shall be selected. The quantity placed with each company shall not exceed 20 percent of each company's total capability to produce a like or similar item during the production period, until the total quantity is covered. The 20 percent restriction may be exceeded when a company so desires. (Note: The 20 percent is applied against the company's total capability to produce the like or similar item, irrespective of whether the company has multiplant or single plant production facilities.)

(iv) When there are relatively few companies capable of producing the items, the total quantity shall be allocated among all qualified producers, regardless of the percentage of capacity utilized.

(v) Every effort shall be made in each case to spread the requirement in such a way as to minimize the overall impact on the affected industry.

(4) The price data for these unilateral rated orders shall be developed using the latest published industry pricing data or the last award price, adjusted as necessary to reflect current market pricing conditions. Further adjustment of these prices may be necessary to meet a quality producer's standards, or to provide for a differential for a job shop's cost as compared with mass production costs. It should be noted that when pricing rated orders, the applicable requirements of FAR and the DFARS pertaining to cost or pricing data shall be followed.

(5) Reserved.

(6) Requirements for contract review and approval by the Executive Directorate, Procurement Management.

(i) The requirements of 1.690-6 for review and approval prior to award of certain type contracts are waived for contracts resulting from unilateral rated orders. However, such contracts for which preaward review has been waived shall be submitted to HQ DLA for a postaward review when called for by **DLSC-PPB**.

(ii) Letter contracts still require authorization by HQ DLA in accordance with 1.690-6(g).

(7) A copy of all unilateral rated orders will be forwarded to HQ DLA, ATTN: **DLSC-PON**, at time of issue.

(8) There may be instances when suppliers refuse to accept unilateral rated orders. In such situations, negotiations shall be conducted at the level of the chief of the contracting office to determine whether some accommodation can be reached. If the contracting office agrees that a contract requirement is inconsistent with the contractor's regularly established terms of sale but there is no authority to waive the requirement, the matter will be referred to HQ DLA, ATTN: **DLSC-PON**, for resolution. If, in the judgment of the contracting office, the requirement is consistent with the contractor's regularly established terms of sale, but the parties disagree on the terms and conditions of the unilateral rated order (including failure to agree on a reasonable price), the contractor's written refusal, citing reasons, together with a completed DoC Form ITA-999, Request for Special Priorities Assistance, shall be forwarded through

established priorities assistance channels to HQ DLA, ATTN: **DLSC**-PON, for action. It is emphasized that DoC will not direct any company to accept a rated order when the company has proper grounds for refusing the order. Each DLA contracting office will assure that the actions and determinations described, including a physical plant survey (for exception see subparagraph (2) above) by a DCMC field office, have been accomplished prior to requesting HQ DLA sponsorship of a request for DoC special priorities assistance.

11.604 Solicitation provision and contract clause.

(90) Notice to Offerors. The clause at 52.211-9002, Priority Rating, shall be included in all solicitations distributed to industry for contracting action except for items excluded under 15 CFR 700.18(b).

SUBPART 11.7 - VARIATION IN QUANTITY

11.701 Supply contracts.

(a) **DESC** is authorized to deviate from the requirements at FAR 11.701(a) and (b) and the clause at FAR 52.211-16. They may express the permissible variation in quantity of supplies as a rail car, not a percentage.

11.701-90 Procedure for closing contracts with inconsequential amounts undelivered.

The contracting officer is authorized on a case-by-case basis to consider a contract completed when an inconsequential amount not falling within the variation in quantity clause remains undelivered or, in the case of brand name subsistence or less than carload lots (LCL) of perishable subsistence items, the undelivered amount is no longer required by the using activity, provided all of the following conditions exist:

(a) Provision for payment is on a unit price basis, and the contractor advises that no further deliveries will be made;

(b) Payment is made for the units actually received;

(c) The undelivered portion is inconsequential, or in the case of brand name subsistence or LCL perishable subsistence items, the undelivered amount is no longer required by the using activity, and the cost of executing a supplemental agreement (including, but not limited to, taking termination action) is excessive in relation to the benefits to the Government from such action; and

(d) The contracting officer includes in the file a memorandum stating that no rights of the Government are being waived by this procedure, and a termination for default is not warranted. The contracting officer shall execute and distribute an SF 30, Amendment of Solicitation/Modification of Contract, as an administrative change to the contract to deobligate funds. The change shall indicate that the above criteria have been met and the contract is considered complete, and shall reference the contractor's communication which advised that no further deliveries will be made.

11.703 Contract clause.

(a) **Defense Energy Support Center (DESC)** is authorized to use **DESC** clause 52.211-9F16, Variation in Quantity (DEC 1995) (DEVIATION), in lieu of FAR clause 52.211-16. Variation in Quantity, in fixed-price, indefinite-delivery type solicitations and contracts for coal. See 11.701(a).

(b) Delivery of Excess Quantities of \$250 or Less. Unless there is a valid reason to the contrary, the clause set forth in FAR 52.211-17 shall be included in all contracts, purchase orders, and Blanket Purchase Agreements.

PART 12

ACQUISITION OF COMMERCIAL ITEMS

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SUBPART 12.1 - ACQUISITION OF COMMERCIAL ITEMS - GENERAL.

12.102 Applicability.

(a)(90) Part 12 is mandatory, except for the exemptions at FAR 12.102(d), if --

(i) The Commercial Off-the-Shelf (COS) field in the Contracting Technical Data File (CTDF) is coded "Y," which indicates **to the buyer that a technical review (either on an individual or group basis) has resulted in a preliminary determination that the item meets the definition of commercial item at FAR 2.101 (but see FAR 12.102(90)(1)) regarding the contracting officer's authority to make the final determination).**

(ii) The COS field is blank, but the item or service is clearly a type that is used by non-Government customers and that would meet the definition of commercial item at FAR 2.101; or

(iii)(A) **After issuance of the solicitation, the agency identifies an available item or service that will satisfy the government's requirement and that meets the definition of commercial item at FAR 2.101; and**

(B) **The item, if other than the exact approved item cited in the procurement item description (PID), has been determined technically acceptable.**

(91) Part 12 cannot be used if --

(i) The COS field is coded "N;"

(ii) The COS field is blank, but the item or service is clearly Government-unique (see FAR 10.002(d)(2)); or

(iii) The following conditions apply --

(A) The COS field is blank;

(B) It is not clear whether the item or service is a type that is used by non-Government customers;

(C) The acquisition is below the simplified acquisition threshold (SAT); and

(D) It is not cost-effective to conduct market research (see FAR 10.001(a)(2)(iii)).

(90)(1) *The contracting officer, not the offeror or contractor, has the authority to determine if an item meets the definition of "commercial item" or not. In making this determination, the contracting officer shall request and consider the advice of appropriate specialists (see FAR 1.602-2(c)). The contracting officer is not required to make a determination of commerciality for every acquisition. The contracting officer is required to conduct market research "appropriate to the circumstances", in accordance with FAR and DLAD 10.001(a)(2).*

(2) *Generally, to meet the commercial item definition at FAR 2.101 (i.e., paragraph (a)), an item must be "of a type customarily used for nongovernmental purposes" and must have been "sold, leased, or licensed to the general public" or "offered for sale, lease, or license to the general public." (See 12.102(90)(2)(i) - (iii). The phrase "of a type customarily used for nongovernmental purposes" means a governmental entity is not the exclusive end user. The "general public" means buyers other than the Government or affiliates of the offeror. There must be a sufficient number of buyers to constitute a meaningful commercial market. The item or service involved must not be for Government end use or foreign military sales.*

(i) *Invoices documenting sales to commercial customers should normally be sufficient to indicate that the item has been sold to the general public.*

(ii) *The phrase, "offered for sale, lease, or license to the general public" addresses items that are fully developed and that are ready to be made available to the general public (see 12.102(90)(2)). These could be items that were originally developed for exclusive commercial application; items that were originally developed for dual use by Government and the commercial market; or items that were originally developed for Government-unique application but for which nongovernment applications were subsequently identified and there is no reason to expect that commercial sales will not be forthcoming. Market forces are at work when a company decides to make an item available to the commercial marketplace, because that decision is based on market research indicating what the general public will demand in terms of capabilities, pricing, quality, and other criteria. To determine if an item has been offered for sale, lease, or license, the contracting officer needs evidence to indicate that the offeror or contractor makes its catalog available or otherwise markets to legitimate potential customers, appropriate to the type of item being acquired.*

(iii) *Knowledge that an item is in a catalog is insufficient to determine that the item is commercial, especially if the commerciality of all items included in the catalog has not been verified. The contracting officer should ask the offeror or contractor to identify to whom it markets and, if such firms are not implicitly known by the contracting officer to be legitimate customers or potential customers, ask the offeror or contractor for information on actual sales of similar items made to such customers or contact the prospective customer identified for more information to determine if the offering is legitimate.*

(3) *To determine that an item is commercial pursuant to one or more paragraphs of the definition other than (a), the contracting officer shall obtain appropriate documentation as necessary (e.g., commercial product literature, technical opinion as to the effect of a modification.)*

(4) *Contracts must require that additions to catalogs are subject to a determination of commerciality.*

(91) *If a prospective contractor offers any item other than the exact approved item cited in the procurement item description (PID), the alternate item must be evaluated for technical acceptability. Quoters or offerors must comply with the requirement in FAR 52.212-1 to provide a technical description of the items being offered in sufficient detail to evaluate compliance with solicitation requirements. When necessary, local provisions may be developed that include more specific requirements for information.*

(92) *The contracting officer may negotiate the Part 12 terms and conditions into the purchase order or contract when the conditions described below apply. (This is not a solicitation amendment, because all parties receiving the synopsis notice and/or the solicitation had the same opportunity to identify and offer an alternate item, including a commercial item.)*

(i) The solicitation was not issued in accordance with Part 12, because the agency had not identified any commercial items that could meet the Government's need (see FAR 10.002(d)(2)); and

(ii) An item is offered that is determined by the agency to meet the definition of commercial item at FAR 2.101 and to be technically acceptable in time for award under the instant acquisition.

SUBPART 12.2 - SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.

12.207 Contract type.

(90) Indefinite-delivery contracts may also provide for economic price adjustment using a locally developed clause to set firm contract prices based on prevailing established catalog or market prices in accordance with FAR 16.501-2(c),

12.208 Contract quality assurance.

(90) Reliance on contractors' quality assurance systems is preferred. However, other quality assurance practices (such as in-process, in-plant inspection for critical application or complex items) are considered consistent with customary commercial practice when market research indicates they are at least sometimes used in the industry for items that are the same as or similar to the ones being acquired. When Government inspection and testing before tender for acceptance are determined necessary and cannot be considered consistent with customary commercial practices, the contracting officer may request a waiver in accordance with FAR and DLAD 12.302(c).

SUBPART 12.3 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

12.301 Solicitation provision for acquisition(s) of commercial items.

(b)(2)(90) When the conditions at 13.103 and 13.104 apply, use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, instead of FAR provision 52.212-3.

(e) Discretionary use of FAR provisions and clauses. Subject to the procedures in FAR and DLAD 12.302, the contracting officer may

(90) Include other DLAD and locally developed provisions and clauses; and

(91) If necessary, make accompanying changes to the provision at FAR 52.212-1 and the clause at FAR 52.212-4.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) Terms and conditions that can reasonably be presumed to have application in both government and commercial markets (e.g., shipping instructions for extreme climates) may be included in solicitations and contracts for commercial items without conducting additional market research.

(b)(3) When fast payment procedures are authorized (see DLAD Subpart 13.3), contracting officers may revise the paragraph at FAR 52.212-4(i), Payment, as necessary to reflect fast payment procedures, which are authorized when specified conditions are met pursuant to the Prompt Payment Act and OMB Circular A-125.

(90) Contracting officers may delete from solicitations and contracts the portions of the provisions at FAR 52.212-3 and DFARS 252.212-7000 and the clauses at FAR 52.212-5 and DFARS 252.212-7001 that do not apply and replace them with applicable language, if any.

(c) Tailoring inconsistent with customary commercial practice. Approval authority for waivers under FAR 12.302(c) is delegated to one level above the contracting officer.

SUBPART 12.5 - APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(90) For the purposes of flowdown requirements pursuant to Part 12, Distribution and Pricing Agreements (DAPA) shall be treated as subcontracts (see the clauses at FAR 52.212-5(e) and 52.244-6(c)).

***SUBPART 12.6 - STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR
COMMERCIAL ITEMS***

12.603 Streamlined solicitation for commercial items.

(a)(1) If the information necessary to prepare an offer exceeds the 12,000-character space limitation of the synopsis format (see FAR 5.207(b)(4), Item 17, Description), the information can be incorporated by referencing a source (e.g., home page or other Internet site) where the information is available for viewing.

PART 13

SIMPLIFIED ACQUISITION PROCEDURES

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SUBPART 13.1 - PROCEDURES

13.101 General.

(a)(1)(90) The Government should take advantage of quantity price breaks whenever warranted. A provision substantially the same as that at 52.213-9000, **Quantity Break**, should be included in simplified acquisition solicitations, except where the contracting officer documents why it would serve no useful purpose. When it appears that it is in the best interest of the Government to purchase a larger quantity to take advantage of a lower unit price, the item manager should immediately be provided the details and an amendment to the purchase request quantity requested. If the item manager indicates that the quantity cannot be increased, the contracting officer shall document the contract file and purchase the original quantity.

(b)(2)(90) The provision at 52.213-9004, **Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce**, shall be used in all solicitations below the simplified acquisition threshold issued via electronic means. It consolidates, to the maximum extent practicable, various FAR/DFARS/DLAD clauses/provisions that require the respondent/offeror to submit information to the Government prior to and for the purpose of award. It is also intended to ensure the successful transmission and subsequent

interpretation of that information within the automated processing system by means of alphanumeric coding in lieu of the "x-the-box" method of response. See also FAR 13.302-5(d).

(91)(i) When the individual FAR, DFARS, and DLAD provisions cited in provision 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, are used in solicitations issued using electronic means, the latter provision shall be used for certifications and representations, and to record and consolidate all offeror- (respondent-) provided information required by the applicable fill-in paragraphs of the cited source provisions. Although still bound by these source provisions in their entirety, offerors/contractors shall not be required to enter requested information into both the consolidated and the individual provisions. That is, their entering the requested information into 52.213-9004 shall be considered complete fulfillment of the data requirements of the applicable paragraphs of all source provisions.

(ii) The full text of source provisions used in consolidated provisions intended to facilitate electronic commerce shall be made available as follows: DLAD- or local acquisition regulation-level provisions shall be included in full text in every applicable buying activity master solicitation. If the FAR- and DFARS-level provisions are not also reproduced in full text in the master solicitation, the contracting officer shall provide a reference within the consolidated provision to an Internet location where they may be found. See 14.203-3(90).

(90) See 90.12 for the Simplified Acquisition Price Review Program.

13.106-1 Soliciting competition.

(a) Considerations.

(2) Use of best value buying procedures is encouraged in competitive purchases where they would help improve the quality of the award decisions.

(b) Soliciting from a single source.

(1) Whenever urgency of the requirement necessitates limiting competition, and precludes the use of normal automated contracting procedures, the historically lowest price source should be contacted. However, award may be placed with another source when any increased price is reasonable and consistent with the extent to which delivery is required to be expedited.

13.106-2 Evaluation of quotations or offers.

(b) Evaluation procedures.

(90) The procedural flexibilities described at FAR 13.103 and 13.106-2 are intended to be illustrative, not all inclusive. For example, if discussions are necessary with an offeror, contracting officers are authorized to hold discussions with one or more offerors, but need not conduct discussions with all offerors in the competitive range if such discussions are unnecessary and the procedures for these discussions are fair and equitable to all offerors.

13.106-3 Award and documentation.

(a) Basis for award.

(3) Contracting personnel should avoid placing orders with vendors who have a minimum order quantity/value, and/or a minimum billing/charge policy, wherever possible. In furtherance of this policy, indefinite delivery contracts (IDCs), blanket purchase agreements (BPAs), and basic ordering agreements (BOAs) shall contain a provision explicitly precluding such features. In addition, the following alternatives should be explored before placing a purchase order with a supplier that follows such practices:

(90) Seek to eliminate or minimize the charge. (However, when an offer is low on an individual acquisition, inclusive of minimum charge, which the offeror will not reduce or agree to remove from its offer, such offeror should receive the award.);

(91) When appropriate, increase the quantity of the buy; or

(92) Make a concerted effort to consolidate orders with other buys from the same vendor. If the foregoing efforts are to no avail, DLA contracting personnel, when

writing orders with vendors having such policies, will separately identify the unit price and amount for each item ordered and the minimum billing or service charge.

(b) File documentation and retention.

(90) Data to support purchases.

(A) The price reasonableness determination shall:

(i) Be documented (including the basis thereof and other relevant information cited in the sample format in (v), below).

(ii) Address the adequacy of any price competition received for assuring price reasonableness.

(iii) Address the comparability to prior prices paid for the same or similar item, if any, and

(iv) Incorporate, attach, or reference any other analyses performed concerning the reasonableness of the award price (see FAR, this paragraph, and DFARS 217.7504), along with any source data utilized (e.g., name, date, location, and page number of contractor catalog or other reference).

(v) Sample format.

SIMPLIFIED ACQUISITION PRICING MEMORANDUM

PURCHASE REQUEST OR CALL/ORDER NUMBER: _____

ITEM NUMBER & NAME: _____

PRICE REASONABLENESS BASED ON (Check one or more):

PRICE COMPARABILITY WITH PRIOR PURCHASE PRICES (Adjusted as appropriate):

Yes _____ No _____ NA _____

Explain: _____

_____ ADEQUATE PRICE COMPETITION (Attach quotes/abstract) INVOLVING:

_____ ONE MANUFACTURER'S PART or _____ PARTS OF VARIOUS MFRS

Identify type competition (mfrg(s)/dealer(s)/both), competitive range of offers, etc.: _____

_____ COMPARISON WITH PRIOR PURCHASE PRICE(S) OF SIMILAR ITEM NAME & NO.:

CONTRACT & CALL/ORDER NO. _____

VENDOR _____ AWARD DATE _____

UNIT OF ISSUE _____ UNIT PRICE _____ QTY _____

EXPLAIN ADJUSTMENTS AND BASIS FOR DETERMINING PRIOR PRICE REASONABLE: _____

_____ COMMERCIAL CATALOG/PRICE LIST FOR:

_____ SAME ITEM or _____ SIMILAR ITEM

NAME/NUMBER _____

DATE _____ PAGE _____

EXPLAIN DIFFERENCES: _____

_____ ESTABLISHED MARKET PRICE:

MEANS OF VERIFICATION: _____

____ VALUE/VISUAL/COST ANALYSIS BY BUYER/USER/TECHNICAL PERSONNEL
(Attach or reference the review of technical data, examination of sample,
etc.):

EXPLAIN: _____

____ OTHER (Explain specific reason, e.g., valid purchase request estimate,
minimum order quantity, high priority delivery, special packaging/marketing,
etc.): _____

SIGNATURE OF BUYER

DATE

(B) Pricing techniques in the absence of adequate price competition.

(i) The technique of comparing the items to a similar competitive item should offer the best assurance of fair and reasonable pricing in simplified acquisitions. In the majority of purchases over the **micro-purchase** threshold involving noncompetitive and non-cataloged items, this method should be used to determine price reasonableness. It is not necessary to locate an identical item or to compare every feature of the two items. Quantity, packaging, and other factors must be considered in arriving at an independent estimate of a reasonable price for the individual acquisition. Abstracts of bids maintained by the contracting office may be useful in this regard. Commercial catalogs and price lists should also be used.

(ii) When prices appearing in a contractor price list are used for determining price reasonableness, see **15.404-1(b)(2)(iv)**.

(iii) Visual examination of warehouse samples, photographs, videotapes, drawings and/or DD Form 146, Federal Item Logistics Data Record, descriptions can be of considerable value in determining that a price is fair and reasonable. Often the actual manufacturer is revealed by this examination. Sources solicited shall include any manufacturers revealed by visual examination.

(iv) When other methods available to contracting personnel are unproductive, pricing/technical assistance should be considered for use in the buyer's **price reasonableness** determination.

(v) When a price reasonableness determination cannot be made via a price analysis technique, the determination may be made using one of the forms of cost analysis. When the cost analysis involves proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology, see **15.404-1(c)(90)**.

13.106-90 Other solicitation issues.

(a) Evaluation of simplified acquisitions/quotations involving source inspection. The provision at 52.2 13 -9001, Evaluation Factor for Source Inspection, shall be inserted in **all** simplified acquisition solicitations. **It shall be exercised for the acquisition of items normally requiring destination inspection (see FAR 46.402 and 46.403),** when source inspection is **specified** for offerors **under either of the following conditions: the offeror has** a history of delivering nonconforming material on destination assigned contracts/purchases; **or the offeror insists that inspection be performed at source, despite the Government's determination that source inspection is unnecessary.** When source inspection is **to be performed under either of these conditions,** the contracting officer shall exercise the provision at 52.2 13-9001 and add **\$250** to that offeror's quoted price. If multiple source inspections are required, the evaluation factor will be multiplied by the number of inspections required, and that figure will be added to the offerors quoted price.

(b) Evaluation of simplified acquisitions/quotations involving the conduct of preaward surveys (PASs). [This paragraph pertains only to those contracting offices that have decided, in accordance with **15.304(c)(95)**, to use the PAS evaluation factor coverage **therein.**] The provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be

inserted in simplified acquisition solicitations and exercised when a PAS is required to determine the responsibility of prospective contractors described in **15.304(c)(95)(A) through (F)**.

(c) Disposition of unsolicited quotations.

(1) Unsolicited quotations need not be evaluated except when it is feasible and practicable to do so in order to:

(A) Satisfy the requirements of FAR 13.104 to provide for maximum practicable competition; or

(B) Consider alternate offers to provide competition for sole source items (also see 17.7501(b)(4)).

(2) Contracting personnel should return quotes to the offeror with an explanation of the reason(s) the quote is not being considered for award. This explanation may take the following form:

Sir/Madam:

We received your quotation but are unable to evaluate it for the following reason(s):

___ Request for Quotation (RFQ) Number or other identifying number was not included.

___ The quote did not contain the following certification requirements:

(Enter the certification requirements which are missing.)

___ The quote offers an alternate item, but evaluation data sufficient to evaluate your quote were not included. (Identify the missing data.)

___ Other. (State other reasons for returning quotation here.)

We appreciate your interest in doing business with this Center and recommend you apply for inclusion on our various solicitation mailing lists. To receive application information, you may write to the above address or call (area code/phone number).

(d) All solicitations issued under this Part, both written and oral, will be assigned a unique request for quotations number ("Q", "T", or "U" in PIIN position 9, as appropriate), to be used for the primary identification of the solicitation. While the procurement request number may be cited as an additional reference number in solicitations, it must be used in conjunction with an RFQ number.

SUBPART 13.2 - ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

13.202 Purchase guidelines.

(a) Solicitation, evaluation of quotations, and award.

(2) **A conclusion as to price reasonableness is** required prior to award, regardless of dollar value. In competitive buys, review of competitive quotations and pricing history should **normally suffice**. For non-competitive buys, **the conclusion** may be based on comparable prior buy history or, where appropriate, a commercial catalog/price list, similar item or other price analysis technique. In the absence of any of the foregoing a price quotation from one (1) additional vendor is required.

(3) Price reasonableness verification (**e.g., to a source document or other authority**) is required prior to award (or call acceptance):

(90) For first-time buys.

(91) When a price is highlighted/kicked out for buyer review pursuant to a price variance check procedure in SPEDE, PACE, and other automated systems.

(b) Documentation.

(90) Award documentation shall be limited, but include:

(A) The price quote(s) received plus, for any other price(s) considered, the price, source, quantity, and effective date;

(B) The price reasonableness conclusion, in any instance where the award is to be made at a price known or suspected of being unfair and unreasonable, or where the price is not considered reasonable. (The absence of documentation of the conclusion shall be deemed as an implicit affirmation that the price was considered reasonable); and

(C) The basis/bases of the price reasonableness conclusion (e.g., catalog price, commercial off the shelf item, comparable item, etc.) for:

(i) first time buys where competitive prices were not received;

(ii) a single quote for a previously bought item is considered excessive in comparison to such prior prices(s), as adjusted for any differences in quantity, time, etc.

The absence of documentation of the basis/bases shall be deemed an implicit affirmation that the price reasonableness conclusion was based on competition received (documented per 13.202(b)(90)(A)) or on consistency of a single quote with the prior price(s).

SUBPART 13.3 - SIMPLIFIED ACQUISITION METHODS

13.301 Governmentwide commercial purchase card.

(90) The Governmentwide commercial purchase card may be used **as a method of purchase and/or payment** as a method of payment for purchases and orders not exceeding the simplified acquisition threshold under existing indefinite delivery/indefinite quantity contracts, **and** for other contracts when the contract authorizes its use as a payment method. **Procedural guidance on use of the purchase card is in DLA 4105.3, DLA Governmentwide Commercial Purchase Card Program.**

13.302 Purchase orders.

13.302-1 General.

(90) Documentation of the price or cost analysis techniques as discussed at **13.106-3(b)(90)(B)(ii) and (v)** shall also be accomplished for awards of priced purchase orders and definitization of unpriced purchase orders (UPOs).

13.302-2 Unpriced purchase orders.

(90) **Consistent with the intent of DFARS 217.74** the requirements of DFARS Subpart 217.74 and DLA 17.74 shall be followed for all UPOs issued by DLA contracting offices.

13.303 Blanket Purchase Agreements (BPAs).

13.303-2 Establishment of BPAs.

(c)(3)(90) While BPAs may be established with Federal Supply Schedule (FSS) contractors for both non-FSS items and FSS items, a distinction between such items should be made.

(91) A BPA with an FSS contractor for non-FSS items which can be construed to cover FSS items because of a generic item description should contain a statement to the effect that the BPA excludes all items on FSSs.

(92) If it is desired to establish a BPA with an FSS contractor for items on an FSS, the agreement shall be consistent with the provisions of the applicable FSS, i.e., period of agreement, terms and conditions. The terms of the agreement should be limited to a simplification of purchasing techniques, such as placement of calls orally and provisions for submitting monthly consolidated billings.

13.303-3 Preparation of BPAs.

(a)(1) **Description of agreement.** The maximum aggregate amount, if any, of all calls to be issued against one BPA shall be prescribed by the HCA.

13.307 Forms.

(90) DLA Form 1224, Shipping Instructions may be used to issue automated calls made under a BPA.

(91) The SAMMS Automated Simplified Purchase System (SASPS) issues requests for quotations using DLA Form 1231, Request for Quotation.

13.390 Indefinite delivery purchase orders (IDPOs).

13.390-1 General.

An IDPO is a simplified acquisition procedure that applies indefinite delivery contract concepts to simplified acquisitions. An IDPO, when established by agreement of the contractor, establishes a standing quotation(s) from the contractor for a definite period for an indefinite quantity of supplies. However, when established as a contract, through performance undertaken by the contractor on a purchase order, an IDPO establishes a firm commitment that the contractor will perform under subsequent orders issued, at the purchase order price for a definite period for an indefinite quantity of supplies.

13.390-2 Application.

Use of an IDPO is appropriate where repetitive low dollar value purchases are made for the same item, the price of the item is expected to be stable, and expected yearly or other long-term demands are not sufficient to establish an indefinite delivery contract. The aggregate total dollar value of orders issued against an IDPO during the ordering period shall not exceed **the simplified acquisition threshold (or \$5,000,000 for acquisitions conducted under FAR Subpart 13.5)**. To establish an IDPO above \$25,000 the contracting officer must satisfy the publishing requirements at FAR 5.101. Requirements shall not be split to qualify for use of an IDPO (see FAR **13.003(c)**). Only one IDPO shall be established per item.

13.390-3 Ordering period.

The ordering period should not normally exceed 1 year.

13.390-4 Decision to establish an IDPO.

The decision to establish an IDPO shall be made by the contracting officer in coordination with the inventory manager.

13.390-5 Methods of establishment.

(a) Unilateral IDPO. An IDPO may be established unilaterally. When this is done, notwithstanding the fact that a vendor has quoted against the provision at 52.213-9002, the vendor, as with any unilateral purchase order quote, will not have entered into a contract that binds it to the IDPO provision for performance under subsequently issued orders. Likewise, the Government is not obligated to place subsequent orders under the IDPO provision. Effecting the purchase in this manner provides the flexibility to determine the method of purchase for a subsequent requirement (e.g., order against the IDPO, or issue a new solicitation) that is in the best interest of the Government. (Note that use of this approach does not preclude the execution of a bilateral purchase order for the basic requirement. Under this approach, however, the IDPO provision remains a unilateral offer when included in the purchase order for the basic requirement. Bilateral purchase orders may still be issued under this method for the IDPO quantities.) If this approach is used, the following applies:

(1) Publication and display. To establish a unilateral IDPO with an aggregate value in excess of \$10,000 the contracting officer must satisfy the public display requirements at FAR 5.101 (post if over \$10,000 and synopsis if over \$25,000). The publication and display will preclude the need to publish/post subsequent orders placed under the IDPO.

(2) Solicitation provision. The provision at DLAD 52.213-9002, Indefinite Delivery Purchase Order Agreement, shall be included in solicitation documents for supplies when a unilateral IDPO is planned to be established. The solicitation shall request quotes on the basic requirement, and request that the prospective contractor state if it agrees or does not agree to accept subsequent orders within the stated quantity range at the quoted price for the current requirement specified in the Request for Quotations. The basic quantity requirement shall be within the minimum and maximum quantity range and order frequency limit included in the provision at 52.213-9002 at the time of solicitation.

(3) Evaluation and award. Quotations from offerors that do not quote against the provision at 52.213-9002 shall not be rejected as technically unacceptable. Award shall be made to that responsible offeror that submits the low, technically acceptable quotation for the basic requirement. If the price for the projected requirements is determined fair and reasonable at the time of award for the basic requirement, price reasonableness determinations need not be made for subsequent orders placed under the IDPO provision.

(b) Bilateral IDPO (purchase order with indefinite quantity terms). An IDPO may be established bilaterally. Under this approach, offerors shall be advised, by inclusion of the clause at 52.213-9003, that performance under the purchase order, by supplying the minimum order quantity (the basic order quantity), requires the contractor to provide the additional supplies specified in the clause at 52.213-9003, within the stated minimum and maximum quantities, as ordered by the designated ordering officer. Use of this approach establishes a binding contract for the IDPO, yet does not bind the Government to place orders against the IDPO. If this approach is used, the following applies:

(1) Publication. To establish a bilateral IDPO with an aggregate value in excess of \$10,000, the contracting officer must satisfy the publishing requirements at FAR 5.101 (post if over \$10,000 and synopsis if over \$25,000). The publication will preclude the need to publish subsequent orders placed under the IDPO.

(2) Solicitation clauses.

(i) The clause at DLAD 52.213 -9003, Indefinite Delivery Purchase Order Contract, shall be included in solicitation documents when a bilateral IDPO is to be established. This clause provides that initial performance under the purchase order (by supplying the minimum purchase order quantity) obligates the contractor to provide the additional supplies, within the stated minimum and maximum quantities cited in the clause, as ordered by the ordering officer.

(ii) The clauses at FAR 52.216-18, Ordering; FAR 52.216-19, Order Limitations; FAR 52.216-22, Indefinite Quantity; and FAR 52.249-8, Default (Fixed-Price Supply and Service), shall be included in solicitations that contain the clause at DLAD 52.213-9003.

(3) Evaluation and award. A solicitation provision shall be included in RFQs that advises whether or not the Government will reject quotes as technically unacceptable from offerors that do not agree to the clause at DLAD 52.213-9003. Award shall be made, under the conditions specified in the solicitation, to that offeror that submits the low, technically acceptable quotation for either (a) the minimum requirement, or (b) the combined basic and IDPO requirements, depending on the conditions specified in the solicitation. When the award includes the IDPO clause, the price(s) for the minimum purchase order quantity and for the IDPO projected requirements shall be determined fair and reasonable at the time of award of the basic requirement.

13.390-6 Order numbering.

IDPO orders shall be numbered in accordance with the uniform procurement instrument identification numbering (PIIN) system. The initial purchase order and subsequent orders shall be distinguished by a "D" in the ninth position and a "5" in the tenth position of the PIIN. The initial purchase order shall be numbered with sub -PIIN number 0001. Subsequent orders shall be serially numbered with sub -PIIN numbers 0002 through 9999. Unless the contracting officer determines otherwise, the IDPO will be held in an open status in the SAMMS Active Contract File until the end of the ordering period or until the final payment has been made on all orders, whichever is later.

13.390-7 Contract administration.

When an IDPO is assigned to a contract administration office (CAO) for contract administration, a basic IDPO will be issued separate from the issuance of any IDPO orders. This action allows the CAO to enter basic contract information into the Mechanization of Contract Administration Services (MOCAS) system for use in processing all orders issued against that IDPO.

SUBPART 13.4 - FAST PAYMENT PROCEDURE

13.402 Conditions for use.

(90) The additional criteria set forth below shall be followed when determining the applicability of fast payment procedures.

(1) Depot Shipments. Requirements which are shipped to a depot and marked for stock are not authorized to use fast payment procedures.

(2) Direct Vendor Deliveries (DVDs). DVDs, including overseas shipments which go through a consolidation point, are authorized to use fast payment procedures. However, DVDs with source inspection and subsistence requirements shipped through a consolidation point prior to shipment overseas are not authorized to use fast payment procedures.

(3) *Reserved.*

(91) The *Commander or designee* of the *Defense Supply Center Philadelphia* shall review and approve all contracts exceeding \$25,000 which use fast payment procedures.

SUBPART 13.5 - TEST PROGRAM FOR CERTAIN COMMERCIAL ITEMS

13.500 General.

(a)(90) *Circumstances when the contracting officer may reasonably expect that quotes or offers will include only commercial items include, but are not limited to, the following:*

(1) *No sources of items other than commercial items are known to exist; or*

(2) *Sources of items other than commercial items are known to exist but are not expected to offer.*

If the contracting officer reasonably expected that quotes or offers would only include commercial items but receives one or more offers of other than commercial items, the contracting officer may proceed with the acquisition under the procedures in Subpart 13.5.

(91) *Contracting officers are authorized to issue purchase orders and blanket purchase agreement (BPA) calls (see FAR 13.303-5(b)(2)) in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000 when the contracting officer determines, after the synopsis of the requirement, and after the evaluation of all offers or quotes in response to the synopsis, that the purchase order or BPA call is the appropriate contract vehicle. Each DLA contracting office may establish appropriate guidelines, based on the nature of the commodities it is responsible for acquiring, as to when a request for proposals may be more appropriate than a request for quotations, and may issue other guidance it determines necessary to protect the Government's interest (e.g., identifying circumstances when use of a bilateral purchase order should be considered). Each DLA contracting office shall retain BPA call limitations it determines appropriate to its automated systems and that are consistent with both the nature of the items it is responsible for acquiring and the historical pricing practices of its suppliers.*

(92) *Some procedures in Part 13 are expressly limited to the simplified acquisition threshold or some lower threshold, or their use is expressly superseded by a reference to differing procedures in FAR Subpart 13.5. Examples of Part 13 procedures that would not be authorized for use when conducting an acquisition under Subpart 13.5 include:*

(i) *Micro-purchase procedures (FAR 13.2);*

(ii) *Simplified justification procedures for sole source buys (FAR 13.106-1(b)(1) and 13.106-3(b)(3)(i));*

(iii) *Fast payment procedures (FAR Subpart 13.4); and*

(iv) *Imprest fund procedures (FAR Subpart 13.305).*

(c) *Unless Part 12 expressly provides otherwise, procedures required in other FAR parts still apply to acquisitions of commercial items, including those conducted under Subpart 13.5. Some examples include the requirements to:*

(1) *Synopsise proposed contract actions expected to exceed \$25,000 in the Commerce Business Daily (CBD) (FAR 5.101(a)(1)); and*

(2) *Announce contract awards valued over \$3,000,000 (FAR 5.303(a)) [\$5,000,000 for DoD (see DFARS 205.303(a)(i))].*

Agency and/or local requirements for review under specified circumstances also still apply, unless explicitly waived. Additionally, if an exemption applies only to acquisitions that are not expected to exceed the simplified acquisition threshold, such an exemption is not applicable when using Subpart 13.5. One example of an exception that does not apply under Subpart 13.5 is the exception from the synopsis requirement when the contract action is expected to exceed \$25,000 but not expected to exceed the simplified acquisition threshold and will be made through FACNET (FAR 5.202(a)(13)). Another example is the new coverage at DLAD 7.102(91), which has been revised to require written acquisition plans for all proposed contract actions other than "those not expected to exceed the simplified acquisition threshold," instead of "those effected under FAR Part 13."

(90) Acquisitions under Subpart 13.5 cannot be conducted in the same manner as those that were formerly called "small purchases," which did not exceed \$25,000 and therefore were never subject to synopsis requirements. Synopsis requirements are not waived for acquisitions conducted under Part 13 (including Subpart 13.5), and all questions or offers must be considered (see FAR 5.101(a)(1) and 13.106-2(a)(3), respectively). Therefore, acquisitions conducted under the authority of Subpart 13.5 are comparable to simplified acquisitions between \$25,000 and \$100,000, which also require synopsis.

13.501 Special documentation requirements.

(a) If an acquisition is conducted under circumstances that would be considered "other than full and open" if Part 6 applied, but is not conducted on a "sole source" basis, no justification and approval (J&A) is required. For example, if the exception for urgency applies but more than one source is solicited, no J&A is required. This is a different standard from the standard in FAR and DLAD Part 6, where any circumstance that is other than full and open requires a J&A. Acquisitions of commercial items described only by a single manufacturer's name and part number are sole source acquisitions and do require a J&A pursuant to FAR Subpart 13.5. When multiple manufacturers and part numbers are identified in the purchase description, the acquisition is not sole source, and no J&A is required.

PART 14

SEALED BIDDING

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SUBPART 14.2 - SOLICITATION OF BIDS

14.201 Preparation of invitations for bids.

(a) Supply and service contracts. For supply and service contracts, invitations for bids shall contain the following information if applicable to the acquisition involved. All items of information shall be set forth in the appropriate sections.

14.201-2 Part I - The schedule.

14.201-2(b) Section B, Supplies or services and prices.

(90) Pursuant to 17.203(d), a provision similar to that at 52.214-9001 should be used when item pricing of options involves separate firm fixed price and fixed price with economic price adjustment portions.

14.201-3 Part II - Contract clauses.

(90) Section I, Contract clauses. The contracting officer shall insert the clause at 52.214-9004, Subcontracting to other industrial preparedness planned producers, in solicitations and contracts whenever contracting without providing for full and open competition under the authority of FAR 6.302-3 (10 U.S.C. 2304(c)(3)).

14.201-5 Part IV - Representations and instructions.

(c) Section M, Evaluation factors for award.

(90) A provision substantially as provided at 52.214-9002, Trade Discounts, may be included in invitations for bids when appropriate. The provision advises bidders that trade discounts offered will be considered in evaluating offers for award and provides that an offered discount in excess of 2 percent will be considered as a trade or special discount, unless the offeror states otherwise. Use of such a provision will assure that the Government does not forego the benefits of intended bids of trade discounts.

same product, but different item numbers are used because of the different destinations. F.o.b. origin offers are permitted. Bidders A and B bid f.o.b. origin on item 1. No bids are received on item 2. Item 1 is awarded to Bidder A. Under present conditions, item 2 would have to be resolicited. With the provision at 52.214-9000, and provided the bidder had not specified otherwise, the Bidder B offer could be applied against item 2. Assuming Bidder B's price was reasonable, item 2 could be awarded to Bidder B and the need for a resolicitation negated.

(92) Bids for incremental quantities (i.e., 500, 1000, 1500, 2000 units) or range quantities (i.e., 500-999, 1000-1499, 1500-1999 units) may be solicited provided the invitation for bids specifies that awards will be made on that quantity and price combination which is most advantageous to the Government.

14.201-8 Price related factors.

(a)(90) [This paragraph pertains only to those contracting offices that have decided, in accordance with 15.304(c)(94), to use this source inspection evaluation factor coverage.] The provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations when the conditions at 13.106(90)(a) exist. The coverage at 13.106-90(a) applies regardless of the dollar value of the acquisition.

(a)(91) [This paragraph pertains only to those contracting offices that have decided, in accordance with 15.304(c)(95), to use the preaward survey (PAS) evaluation factor coverage **therein**.] The provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be inserted in solicitations and exercised when a PAS is required to determine the responsibility of prospective contractors described in 15.304(c)(95)(A **through** (F)).

14.203 Methods of soliciting bids.

14.203-3 Master solicitation.

(b)(90) Distribution of new or revised master solicitations is as follows:

HQ DLA (Executive Director, Procurement Management).....1 copy

DCMDs (ATTN: (Director, Contract Management).....3 copies each

(ATTN: Director, Quality Assurance).....2 copies each

(ATTN: Director, Program and Technical Support).....2 copies each

DCMAs (ATTN: Chief, Contract Management).....15 copies each

(ATTN: Chief, Quality Assurance).....5 copies each

(ATTN: Chief, Program and Technical Support).....2 copies each

DPROs (ATTN: Chief Contract Management).....6 copies each

(ATTN: Chief, Quality Assurance).....2 copies each

(ATTN: Chief, Program and Technical Support).....2 copies each

Defense Finance and Accounting Service: Columbus Center.....2 copies each

(b)(91) Copies of contracts forwarded to GAO shall include a copy of the master solicitation.

(90) Each applicable buying activity master solicitation shall include the full text of all DLAD and local provisions cited in, and incorporated by reference via, provisions consolidating various contractor representations, certifications, and fill-ins. See 13.104(90)(2). FAR-and DFARS-level source provisions shall also be made available as described therein.

14.203-90 Other distribution.

One information copy of each invitation for bids involving the production testing of items will be forwarded at time of issue to HQ DLA, ATTN: **DLSC**-PON in accordance with DLAR 4125.1, Production Testing of DLA-Managed Items.

SUBPART 14.3 - SUBMISSION OF BIDS

14.302 Bid submission.

(b)(1) Telephonic communication of a telegraphic bid shall not be acceptable. A copy of the written telegram must be received by the designated office not later than the exact time set for opening of bids.

14.303 Modification or withdrawal of bids.

(a) A telegraphic modification or withdrawal of a bid received by telephone from the receiving telegraph office shall not be considered. The guidance in 14.302(b)(1) also applies to modifications and withdrawals of bids.

14.304 Late bids, late modifications of bids or late withdrawals of bids.

14.304-90 Hand-carried bids.

Suppliers shall be notified that it is a responsibility of the bidder to place the bid in the bid depository if a bid is hand-carried. Each DLA activity shall establish procedures to ensure that Government personnel do not handle, stamp, or mark the bid envelopes prior to placement of the bids in the depository by the supplier.

(c) Determinations to cancel invitations for bids made pursuant to FAR 14.404-1 shall be in writing, shall describe the items solicited, quantities, number of bids received **and prices, and shall include** a discussion of the basis for canceling, and why it is a compelling reason.

14.407 Mistakes in bid.

14.407-3 Other mistakes disclosed before award.

(e) The Director, DLA, acting as head of the agency, has delegated the authority to make the determinations under FAR 14.406-3(a), (b), and (d) to the General Counsel, DLA; Deputy General Counsel, DLA; Associate General Counsel, Procurement, DLA; and the Chief Counsels of the Defense Supply Centers, the Defense Reutilization and Marketing Service, and the **Defense Distribution Center**. This authority may not be redelegated. Requests to the General Counsel to make these determinations shall be forwarded through local Offices of Counsel.

14.408 Award.

14.408-1 General.

(d) It is particularly important that copies of the award document furnished for contract administration and finance purposes include detailed information as to acceptable additions or changes made by a bidder in the bid. The award document shall include the following data to the extent applicable:

(90) A list of the items or lots accepted with the quantity, unit price, and total price of each item.

(91) An indication of the extent to which award is made on the basis of f.o.b. destination or f.o.b. origin.

(92) Any discount offered by the successful bidder, whether or not such discount was considered in the evaluation of bids.

(93) When the invitation for bids authorizes bids on the basis of brand name or equal, the brand, model, part number, and any other identifying characteristics of the item to be furnished by the successful supplier.

(94) The place of manufacture of the supplies or the performance of services awarded and the name of the supplier when different from that of the contractor.

(95) The place of inspection and acceptance and the name of the activity authorized to effect inspection and acceptance on behalf of the Government.

(96) When the invitation for bids includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable), and award is made f.o.b. origin, see 47.305(91).

(97) The time of delivery.

(98) The place of delivery.

(99) The place for the submission of invoices and payment.

(100) A statement that the award confirms a notice of award.

(101) A statement that the progress payment clause is a part of the contract.

(102) A provision for advance payments.

14.408-2 Responsible bidder - Reasonableness of price.

(90) When a sole responsive bid is received, and in other situations where the sealed bidding method may not have achieved competition sufficient for award at a fair and reasonable price, a price reasonableness determination shall be made based on a price analysis (see 15.404-1(a)(90)(2)) which is documented in the contract file.

14.409 Information to bidders.

14.409-1 Award of unclassified contracts.

(b) Notification to unsuccessful bidders should not be delayed pending preparation and distribution of contractual documents. In cases where a bidder is apparently low based on a comparison of bid price only, the notification should take the form of a letter including the specific reasons for the rejection of the lower bid. This is especially important where rejection results from a transportation evaluation, a negative preaward survey, or for any reason not readily apparent to the bidder. The following is an example of such a letter. This letter may be modified to fit the specific circumstances of the acquisition.

Sir/Madam:

Receipt is acknowledged of your bid in response to our Invitation for Bid No. _____. This is to inform you that award was made to:

Contractor: _____. City _____.

State: _____. Item: _____. Price: _____.

Your interest in bidding on the requirements of this Center is appreciated; however, we were unable to make the required determination that your company is "responsible" within the meaning of that term as defined in paragraph 9.101 of the Federal Acquisition Regulation. The information upon which our decision was based was contained in a preaward survey which was issued by (insert name of appropriate activity). Further details with respect to their findings will be furnished by that activity if you so request. Your name will be retained on the bidder's list to receive future solicitations.

A letter such as the above, if complete and issued promptly, should minimize further correspondence and result in improved contractor relations.

14.90 Requests for decision by the Comptroller General.

Where a decision by the Comptroller General is desired on contracting or disposal matters such as mistakes in bids, remission of liquidated damages, reformation of contracts or other contract issues, the request will be coordinated by local counsel and forwarded to the General Counsel. Each case submitted for a Comptroller General decision will be accompanied by an administrative report which shall include a summary of the matter at issue, the recommendation of the contracting office, and all documents and information deemed pertinent to the issue.

PART 15
CONTRACTING BY NEGOTIATION

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SUBPART 15.1 - SOURCE SELECTION PROCESSES AND TECHNIQUES

15.101-90 Phased competition

(a) Definition - Phased competition is a risk reduction strategy that provides for the development of business approaches, systems development, etc. under contract with subsequent down-select competitions among contractors for further development or full performance within the same contract.

(b) Application - Phased competition procedures may be appropriate when state of the art solutions are sought and significant development work is required by industry. The Government must first explore existing commercial methods and determine whether commercial solutions are available or can be readily adapted to the Government problem or requirement. Where a best commercial alternative is not apparent, or where limited development and adaptation are required, early industry involvement in exploring solutions can be elicited in the presolicitation stage through several alternative approaches addressed in DLAD sections 15.201 and 35.016. However, when state of the art solutions are sought and significant development work is required by industry, reliance on either a single Government solution or an untested commercial solution increases risk for both parties. The risk for industry is that the cost of development work required to submit a proposal will not be recouped if the proposal is not accepted. Such risk reduces industry's interest and willingness to offer innovative solutions. The risk for the Government is that the proposed approach will not meet the Government's requirements or provide the optimal solution. Risk can be reduced for both parties if development and

testing are accomplished under contract through the use of a phased competition. While this is the classic method used to acquire major systems, it is also an appropriate method for business practice reengineering where state of the art solutions are being sought. Before using a phased competition, the Government must carefully weigh the costs and benefits inherent in this approach.

(c) The Statement of work (SOW). Either a general statement of need or a SOW as described below may be used for the first phase of a phased competition. This is in consonance with the order of precedence established in FAR Subpart 11.1. A SOW that engages industry participation would have the following features:

(1) It addresses the current state of operations and provides insight into future operating conditions;

(2) It defines the desired business process future state in terms of the goals of the reengineering effort, and;

(3) It limits specific requirements to essential Government needs, such as systems interface requirements, etc., that must be met in the reengineered business process.

The solicitation allows offerors the freedom to propose solutions to the Government and to describe how the proposal will meet the goals of the reengineering effort. Meaningful industry dialog can help the Government to further refine both the solicitation process and the SOW.

(d) SOW for subsequent phases. Solicitations should describe the content and format for deliverables at each phase of the competition. When this procedure is followed, the contractor's proposed approach, a deliverable which may require revision during negotiations, becomes the SOW for the subsequent phase. Task orders should incorporate the contractor's proposal by reference to prevent the disclosure of the contractor's strategy to competitors.

(e) Pricing of phases. Because of the evolutionary nature of this process, the Government cannot reasonably expect industry to price each phase of development, testing, and/or implementation as of the closing date of the solicitation. Price proposals for phases beyond the initial priced phase can be obtained as deliverables under each subsequent phase of the contract when requirements for each subsequent phases are more fully defined. Under these circumstances, the SOW for the first phase should include a requirement for deliverables, such as the statement of work for contractor-proposed tasks for the second phase, and the prices proposed to accomplish this work. This procedure can be repeated in subsequent phases, as necessary.

(f) Competition. A phased competition is full and open competition where all responsible sources are afforded the opportunity to compete for the initial contract award. The competition includes the evaluation of written proposals for the first phase, and continues as the Government evaluates deliverables and performance during the subsequent phase(s). No justification and approval is required to issue task orders to continue performance in subsequent phases of a phased competition when the phases were included in the synopsis and the solicitation clearly describes the phased approach contemplated.

(g) Source selection through phased competition.

(1) During early industry involvement in this process, the Government may propose phases or work with industry to define the phases that will be used to develop, test, and implement contractual solutions for reengineering processes. Examples of phases that might be used are: concept development, proof of concept, and full implementation or production. During the first phase, the primary goal of the source selection should be to select capable contractors that have a sound understanding of the goals of the acquisition and a reasonable approach. Source selection should also consider the degree of difference in competing proposals to ensure the Government does not pay for duplicate development and testing. In the final phase, evaluation criteria should ensure that the prospective contractor(s) have sufficient background and resources to carry their proposed concept through to fruition.

(2) The SOWs for phases beyond the first phase will develop and evolve through the phased competition process. For this reason, the solicitation should generally request proposals only for the first phase. While the solicitation must include the criteria that will be used to evaluate performance and/or deliverables in each phase, the evaluation criteria for subsequent phases can be described only in general terms

initially in the solicitation. However, definitized evaluation criteria must be developed and incorporated into the contract(s) before performance in the next phase is ordered. The same evaluation criteria must apply to all contractors.

(3) Contractors may be asked at any phase to recommend additional evaluation criteria for subsequent phases. However, the same evaluation factors must apply to all contractors involved in a particular phase. When contract proposals differ greatly in their approach, the evaluation factors should allow evaluation of deliverables and performance in terms of the reengineering goals. This method affords the Government the flexibility to make a comparative assessment of different solutions. If evaluation criteria based on contractor suggestions are used, Government personnel must carefully review these factors before including them to ensure their applicability to all potential solutions, and that the use of these factors would not result in favoring one contractor over another. Evaluation factors should be discerning and should elicit information that will allow the evaluators to qualitatively distinguish differences in proposals.

(4) The solicitation must clearly describe how the Government will conduct the procurement. The following types of statements must be included in a description of the procedures:

(i) The procurement uses a phased competitive approach in which the Government will evaluate deliverables and performance at the completion of each phase to determine which contractor(s) will be selected to continue into the subsequent phase(s);

(ii) Only contractors participating in the immediately preceding phase will be considered for participation in the next phase;

(iii) The Government intends for performance under full implementation or production to be performed by a contractor or contractors who have tested and developed their services/products under all previous phases of competition. Offerors selected must have sound concepts and the resources and background to carry this competition through to fruition;

(iv) The Government reserves the right to make one or more awards as a result of the solicitation, and award to other than the lowest priced offeror after assessment of each offeror's technical and business proposal. The contract should also include the appropriate clauses and provisions regarding task and delivery order procedures under FAR Subpart 16.5; and,

(v) The Government reserves the right to discontinue performance at any phase of the competition.

(5) Normally, multiple awards are made for the initial phase with competitive down-selections in subsequent phases to determine the most promising contractor(s). However, if it is determined that only one of the proposals received is promising, the resulting contract should continue to allow Government evaluation of development and testing for each phase in the Government environment to manage the risk associated with a single strategy.

(h) Notification and debriefing of unsuccessful offerors/contractors. Care must be taken during debriefings to ensure no data is released that would affect the ongoing competition. The names of contractors selected should be fully disclosed at the time the initial award is made and later when subsequent orders are placed. Contractors shall be afforded the opportunity for a debriefing whenever they are eliminated from further participation in the contract. Adequate safeguards must be in place throughout all phases to protect proprietary information, trade secrets, or business confidential information, such as deliverables that will be evaluated to determine which contractor(s) will be selected to perform in subsequent phases.

(i) Contract award. The scope of each contract awarded includes the potential for orders for all phases of contract performance. Task orders will be placed for work to be performed in each phase and this contract will be used, while the contractor remains in the competition, to move through each phase of contract performance.

(j) Cost or pricing data. Normally, cost or pricing data should not be requested in the initial phase of a phased competition, or when more than one contractor will participate in any subsequent phase. It may be appropriate to request information other than cost or pricing data (See FAR 15.403 for additional guidance), however, especially when contractor concepts differ greatly in their approach.

(k) Options. The contract may include horizontal options for additional periods of performance or vertical options for additional quantities during any single phase. For example, the Government may wish to include an option in the solicitation to test solutions at more than one site. Another example would be an option for additional years of performance by the selected contractor(s).

(l) Communications/dialog with contractors. During contract performance, the timely and accurate exchange of appropriate information between the Government and participating contractor(s) is essential. Information must be shared in a manner that precludes preferential treatment throughout all phases.

(m) Type of contract. Both offerors and the contractors selected should be allowed the flexibility in their proposals to suggest the type of contract for each phase. The Government evaluation of proposals should include a review of the type of contract proposed in consonance with the approach proposed, and how the contract type fits with program goals when establishing negotiation objectives. Contract type may differ in each phase, resulting in a hybrid contract.

SUBPART 15.2 - SOLICITATION AND RECEIPT OF PROPOSALS AND **INFORMATION**

15.201 Exchanges with industry before receipt of proposals.

(b) Early exchanges with industry, an essential part of the procurement process, are used to elicit industry participation in the planning and execution of the acquisition, especially when seeking to re-engineer business processes. The acquisition team (for example: program manager, contracting officer, technical support, requirements personnel, and customer representatives) should tailor the nature and extent of the techniques used to each acquisition. Early exchanges with industry can also facilitate the following objectives:

(i) Overcome barriers to acquiring commercial items and technologies and emulating commercial business practices;

(ii) Develop more effective acquisition strategies and procurements tailored to elicit the best commercial solutions available;

(iii) Emulate commercial manufacturing, distribution, and inventory management techniques (e.g., manufacturing on demand, direct vendor delivery, electronic tracking of inventory, and the electronic commercial catalogue);

(iv) Create new buyer-seller relationships that reduce suppliers' dependence on defense business and facilitate integration of defense and commercial industrial bases (e.g., teaming arrangements, dual-use technologies, and shared production agreements with suppliers); and

(v) Make available a defense mobilization base capable of responding to peacetime supply requirements and in time of emergencies.

(c)(3) Sources sought announcements and letters to known potential sources are effective **market research methods** to identify interested suppliers and available products and capabilities.

(c)(6) Draft requests for proposals (DRFP's) **provide industry an opportunity to comment on** any aspect of the proposed acquisition prior to issuing a solicitation. It is appropriate to use DRFP's whenever, in the contracting officer's judgment, the acquisition will benefit significantly from early industry involvement. **DRFPs are** an effective means to resolve potential contract issues and obtain feedback from prospective offerors. Such information can lead to significant cost savings and productivity enhancements; reduce proposal preparation and evaluation time; reduce the need for solicitation amendments and preclude other delays that disrupt timely completion of the acquisition; and result in better proposals, end products, and services. The use of DRFPs can encourage potential sources to provide valuable comments on such matters as:

(A) Proposed customer requirements, including identification of requirements that are "cost drivers;"

(B) Proposed acquisition and evaluation strategy, including business and technical approaches;

(C) Contract methodology, including how best to elicit proposals based on current and emerging commercial practices, and contract type;

(D) Methods to reduce proposal and contract costs and explore technology advancements and contract incentives; and

(E) Revisions to performance, schedule, or other contractual requirements.

The contracting officer should publicize the DRFP using a variety of methods, such as CBD announcements and those methods addressed at 15.201(c) and FAR 5.101(b). The publication and response times for proposed contract actions at FAR 5.203 are not mandatory for DRFPs. The contracting officer should establish reasonable times for receipt of responses to DRFPs that reflect the nature of the product or service, the supply base, and the specifics of the individual procurement. Requirements shall be synopsisized in accordance with FAR 5.203 prior to issuing the solicitation. Alternatively, notice of the availability of the DRFP and a future date when the solicitation will be issued may be included in the same synopsis.

15.204 Contract format.

15.204-2 Part I--The Schedule.

(b) Section B Supplies or services and prices/costs. Guidance at 14.201-2(b)(90) also applies to Request for Proposals (RFPs) and Request for Quotations (RFQs).

(c) *Section C, Description/specifications/statement of work.* Clearly stamp or otherwise indicate "Foreign Military Sales (FMS) Requirements" on the face of each negotiated contract which includes FMS requirements.

15.204-3 Part II--Contract Clauses.

Section I, Contract clauses. The contracting officer shall insert the clause at 52.214-9002, Subcontracting to other industrial preparedness planned producers, in solicitations and contracts whenever contracting without providing for full and open competition under authority of FAR 6.302-3. 10 U.S.C. 2304(c)(3).

15.204-5 Part IV Representations and Instructions.

(c)(90) Section M, Evaluation factors for award. A provision substantially as provided at 52.214-9002, Trade Discounts, may be included in Request for proposals and Requests for Quotations when appropriate. See 14.201-5 Part IV (c)(90) for the effect of this provision.

(i) When prices are solicited on incremental quantities, i.e., 500, 1000, 1500, 2000 units, or range quantities, i.e., 500-999, 1000-1499, 1500-1999 units, notice shall be given to all offerors that award may be made on the basis of that quantity and price combination that is most advantageous to the Government without discussion of proposals.

(ii) For negotiated contracts which are anticipated to be awarded using the adequate price competition exemption to the P.L. 87-653 requirements at FAR 15.403-1(b)(1), price shall be stated to be a substantial factor. If weights are assigned to the various evaluation factors, price must be weighted at least 20 percent for an adequate price competition exemption to be claimed.

(iii) *Defense Energy Support Center (DESC)* is authorized to use DESC clause 52.215-9F33 Shipping Point(s) used in Evaluation of F.O.B. origin offers (FUELS APR 1984) in lieu of FAR clause 52.214-7, late Submissions, Modifications, and withdrawals of Bid, and with the Strategic Petroleum Reserve (SPR) program.

SUBPART 15.3 - SOURCE SELECTION

15.301 Definitions.

"Preaward survey (PAS) evaluation factor" is an amount of money which is added solely for evaluation purposes to the offer of an apparently successful offeror whose performance history normally dictates the conduct of a preaward survey.

Source inspection evaluation factor" is a fixed amount of money added solely for evaluation purposes to the offer of an apparently successful offeror with a history of delivering nonconforming material on destination-assigned contracts/purchase orders.

15.303 Responsibilities.

The Executive Director, Procurement Management has delegated the authority to appoint the source selection authority, if other than the contracting officer, to the Chief of the Contracting Office (CCO). (See 2.101 for designation of the CCO at each of the contracting activities/offices). This delegation is not further delegable. Notwithstanding this delegation, the Executive Director, Procurement Management reserves the right to designate the source selection authority for acquisitions on an exception basis, including acquisitions subject to APEC review (see 7.104-90). FAR Part 3 provides guidance regarding improper business practices and personal conflicts of interest that must be considered in the conduct of an acquisition.

15.304 Evaluation factors and significant subfactors.

(b) Each evaluation factor or subfactor for a given solicitation must address a separate aspect of the offeror's proposal or capabilities in order to avoid double counting. For example, past performance may not be evaluated as a separate technical evaluation factor if the same performance is evaluated elsewhere as part of another evaluation factor or subfactor. It is not double counting, however, to combine a delivery evaluation factor, which evaluates different offered delivery dates, with the past performance factor (e.g., the Automated Best Value System), which evaluates past performance in assessing the risk that an offeror will **not** deliver on the promised date.

(c)(4) Use of small, small disadvantaged and women-owned small businesses (socioeconomic evaluation factor). To implement the guidance contained in FAR 15.304(c)(4) and DFARS 215.304(c)(i), the contracting officer shall establish an evaluation factor to evaluate the extent of an offeror's proposed use of small, small disadvantaged and women-owned small businesses, **or historically black colleges/universities or minority institutions (HBCUs/MIs)**, in order to incentivize offerors to subcontract with such concerns. The weight or relative order of ranking of this factor is at the discretion of the contracting officer, but this factor may not be combined with any other factor. **Although this factor only applies to acquisitions that require submission of a subcontracting plan, the factor itself should be separate and distinct from the subcontracting plan (FAR 19.219-9) as well as from use of the MBA factor (see (c)(90)) and the factor to promote use of Javits-Wagner-O'Day Act (JWOD) entities (see (c)(91)).** All offers submitted in response to the solicitation, whether from small or large businesses, shall be scored/rated on this factor, **except that acquisitions that are set aside for small business, or for very small business or HUBZone participation, shall not include this factor.** Proposals that demonstrate a strong commitment to affording small, small disadvantaged, and women-owned small businesses, **or HBCUs/MIs**, a real opportunity to participate shall be rated more favorably than those that demonstrate little or no such commitment.

(A) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its small, small disadvantaged and women-owned small business, **or HBCU/MI**, subcontract requirements in the contract. The Defense Contract Management Command's small business offices shall be used to assist in assessing a contractor's compliance with these requirements.

(B) Solicitation provisions. Solicitation provisions similar to the ones at 52.215-9002, Socioeconomic Proposal, and 52.215-9003, Socioeconomic Support Evaluation, shall be included in all solicitations that meet the criteria in **15.304(c)(4)**.

(c)(90) DLA Mentoring Business Agreements (MBA) Program evaluation factor. Proposed participation in the DLA MBA Program (see 19.90) shall be separately considered as an evaluation factor in all long term contracts expected to exceed \$500,000 per year.

(c)(91) Use of Javits-Wagner-O'Day Act (JWOD) qualified nonprofit agencies for the blind or other severely disabled - evaluation factor. The contracting officer shall establish an evaluation factor for the extent of an offeror's proposed use of Javits-Wagner-O'Day Act (JWOD) qualified nonprofit agencies for the blind or other severely disabled, in order to incentivize offerors to subcontract with such concerns. (See 8.702.) The weight or relative order of ranking of this factor is at the discretion of the contracting officer, but this factor may not be combined with any other factor. **This factor is separate and distinct from both the socioeconomic evaluation factor described in (c)(4), and also from the MBA factor (see (c)(90)).** All offers submitted in response

to the solicitation, whether from small or large businesses, shall be scored/rated on this factor, except that acquisitions that are set aside for small business, or for very small business or HUBZone participation, shall not include this factor. Proposals that demonstrate a strong commitment to affording JWOD entities a real opportunity to participate in the Government contracting arena (beyond the statutorily mandated use of these entities by prime contractors; see FAR 8.001(c)) shall be rated more favorably than those that demonstrate little or no such commitment.

(i) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its commitment to use of JWOD entities. Field elements of the Defense Contract Management Command shall be used to assist in assessing a contractor's compliance with these requirements.

(ii) Solicitation provisions. Solicitation provisions similar to the ones at 52.215-9004, Javits-Wagner-O'Day Act Entity Proposal, and 52.215-9005, Javits-Wagner-O'Day Act Entity Support Evaluation, shall be included in all solicitations that meet the criteria in 15.304(c)(91).

(iii) Contract clause. A clause substantially the same as the one at 52.215-9006, Javits-Wagner-O'Day Act Entity - Contractor Reporting, shall be included in each contract for which the successful offeror submitted a JWOD entity subcontracting proposal with its offer.

(c)(92) Transportation evaluation preference. Consistent with Department of Defense (DoD) Transportation Acquisition Policy and DoD Readiness objectives, solicitations for integrated logistics management arrangements, such as prime vendor, virtual prime vendor, On Demand Manufacturing, Quick Response, ECAT, and EMall, that may include contractor arranged transportation outside the continental United States, shall include an evaluation factor favoring offerors whose transportation arrangements include the use of carriers with commitments to DoD mobility agreements under Civil Reserve Air Fleet (CRAF) and the Voluntary Intermodal Sealift Agreement (VISA).

(A) When contracting for commercial transportation providers, the requirement of the contractor to support DoD contingency requirements through participation in the Civil Reserve Air Fleet (CRAF) and Voluntary Intermodal Sealift Agreement (VISA) programs, and the required use of Electronic Commerce/Electronic Data Interchange (EC/EDI) and the required providing of their In-Transit Visibility (ITV) data to DoD shall be used as evaluation criteria. A sample evaluation factor and language describing the factor for inclusion in solicitations are shown below.

(i) Description of the preference

This solicitation, consistent with Department of Defense (DoD) Transportation Acquisition Policy and DoD Readiness objectives, includes a transportation preference that favors contractors whose transportation arrangements outside of the continental United States (OCONUS) include the use of carriers with commitments to DoD mobility agreements under Civil Reserve Air Fleet (CRAF) and Voluntary Intermodal Sealift Agreement (VISA).

Offerors, as a part of their proposal, shall indicate the carriers that the offeror will use for air and ocean transportation, if awarded the contract. Offers received will be evaluated to determine the degree of commitment to DoD readiness programs.

Under CRAF, select civil air carriers are contractually committed to support airlift requirements in emergencies when U.S. airlift needs exceed the capability of military aircraft. DoD provides financial incentives via transportation contracts with air carriers in exchange for pledged aircraft for international, long-range, short-range, domestic and Alaskan transportation requirements ready for activation, when needed. During activation, DoD controls the mission of these aircraft. Air carriers continue to operate and maintain their committed aircraft with their own resources. Before receiving a CRAF contract, air carriers must be certified as DoD-approved.

If air transportation OCONUS is anticipated, offerors should provide the name of the transportation company and a statement as to whether the transportation company(ies) has/have a commitment to CRAF. CRAF carriers are preferred.

The VISA was jointly developed by the Department of Transportation Maritime Administration, the DoD, and industry to make intermodal shipping services/systems,

including ships, intermodal equipment and related management services available to the Department of Defense to support the emergency deployment and sustainment of U.S. Military forces by augmenting the capacity of DoD's organic sealift capabilities.

If ocean transportation is contemplated, offerors should provide the name of the company(ies) and category(ies) shown below that best describes the transportation arrangements under the proposed contract. VISA preferences are as follows:

- a. U.S. Flag vessel capacity operated by a Participant and U.S. Flag Vessel Sharing Agreement (VSA) capacity of a Participant.
- b. U.S. Flag vessel capacity operated by a non-Participant.
- c. Combined U.S. flag/foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.
- d. Combined U.S. flag/foreign owned vessel operated by a non-Participant
- e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.
- f. U.S. owned or operated foreign flag vessel capacity and VISA capacity of a non-Participant
- g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

For further information on the Voluntary Intermodal Sealift Agreement, see Federal Register Notice of February 13, 1997 (Volume 62, No. 30, pages 6838 - 6846).

(ii) Evaluation factor:

The extent to which the offeror has, or uses other companies that have, CRAF and VISA commitments in both its DoD and commercial shipping methods.

(c)(93) Surge and Sustainment evaluation factor. When surge and sustainment (S&S) requirements are, or will be, included in the contract, the offeror's capability to meet S&S requirements, or approach for conducting a S&S capability assessment, shall be included as a technical evaluation factor. Examples of S&S related elements which can be evaluated include: offeror's methodology enabling visibility of supplier base resources on a continuing basis; identification of supplier base capabilities to meet S&S requirements and S&S strategy for all items; identification of "problem" items for which S&S cannot be easily met, proposed solutions for these items, and any significant investments needed to implement these solutions; description of access to and plans for coordinating distribution and transportation services for meeting S&S requirements; and offeror's agreements with suppliers and service providers that reflect access to S&S resources.

(c)(94) Cost of Source Inspection evaluation factor. (See also (13.106-90(a), 14.201-8(a)(90), and 52.213-9001). When contractors deliver nonconforming supplies or provide nonconforming services, the contracting officer normally requires inspection and acceptance at source, rather than at destination. **The evaluation factor for source inspection is the expression of the Government's recognition that it incurs costs resulting from poor contractor performance or from contractor demands for additional Government performance not otherwise considered necessary from the Government's perspective.** When the conditions set forth in 13.106-90(a) exist, the provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations. The coverage at 13.106(90)(a) applies regardless of the dollar value of the acquisition.

(A) The source inspection and preaward survey cost factors in offer evaluation can be applied to any procurement. **They** can be applied in conjunction with any source selection method.

(c)(95) Cost of preaward survey (PAS) evaluation factor. (See also 13.106-90(b), 14.201-8(a)(91), and 52.215-9001). When a contractor delivers nonconforming supplies or provides nonconforming services or **is** delinquent in delivery, the contracting officer normally requires a PAS to determine such offeror's responsibility for subsequent acquisitions. (See 9.106) The contracting officer also generally requests a **PAS regarding a prospective contractor in accordance with the criteria listed at (A) through (F), below.** **The evaluation factor for conduct of a preaward survey is the expression of the Government's recognition that** conducting a PAS is an additional expense to the Government. There are certain situations (based on a contractor's prior performance) for which it is appropriate to apply a factor for offer evaluation purposes to the apparently low offer of a prospective contractor when the Government must base its responsibility determination on the results of the survey of that firm or individual. When **these situations** exist, the provision at 52.215-9001, Evaluation Factor for Preaward Survey,

shall be inserted in solicitations. **Additionally**, an amount which is the equivalent of the cost of the survey, currently \$369.00, shall be added to the offeror's proposed price for each survey, regardless of the level of survey (formal or informal) to be performed. The cost of the PAS shall be added to the offer of a prospective contractor (manufacturer or non-manufacturer) who:

(A) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past three years (or other locally-determined time period); or

(B) Is undergoing or has undergone reorganization under bankruptcy laws within the past three years (or other locally-determined time period); or

(C) Is known to the contracting officer to have a poor or marginal performance history; or

(D) Has, within the past year (or other locally-determined time period), received a negative PAS for an item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased; or

(E) Has failed to liquidate indebtedness to DLA (the extent of such indebtedness shall be determined locally); and

(F) The contracting officer has determined must be surveyed for the contracting officer to make a responsibility determination (see 9.104-1(90)(a) and 9.106-1).

15.304-90 Automated best value system.

(a) Scope. The Automated Best Value System (ABVS) is a past performance information system that provides the contracting officer with historical performance data. ABVS analyzes historical quality and delivery performance within each Federal Supply Class (FSC), and provides a numeric score for each offeror that has a performance history. Additionally, ABVS provides an aggregate score for historical performance in all FSCs at the Defense Supply Center (DSC).

(b) Applicability. ABVS will be used primarily for best value award decisions under negotiated acquisitions processed through the DLA Preaward Contracting System (DPACS). ABVS can be used **in any source selection decision**, when determining whether to exercise an option, or request a preaward survey. ABVS may be used in conjunction with total small business set-asides and total small and disadvantaged business set-asides (but see FAR 19.502-3(b)(2) when a requirement is to be partially set-aside for small business).

(c) Overview.

(1) The ABVS score is a reflection of a contractor's past delivery and quality performance over a 12-month period. The delivery history is based on the most recent 12 calendar months exclusive of the most recent 2 calendar months prior to score calculation, and all delinquent undelivered or partially delivered lines. The 2-month offset allows the opportunity to verify late deliveries and determine cause for open contracts. Delinquent deliveries are held against a contractor for 12 months. The quality score is based on quality discrepancies and confirmed laboratory test failures measured over the most recent 12-month period with a 1 month offset. Offset periods are not grace periods. Verified late deliveries and nonconformances that occur during the offset period will be reflected in the score when the offset expires. The past performance timeframe may be expanded up to 24 months at the center's discretion.

(2) An ABVS score represents the aggregate of the individual weighted scores for each of the following performance indicators: product quality nonconformances, packaging nonconformances, laboratory test results, delinquencies, and order rejections where the company has demonstrated an intent to perform. Whenever the contractor's performance on any contract line item number (CLIN) in the FSC results in a contractor caused discrepancy, the score for that element will be less than 100. Contractor performance data within the specified timeframes is collected from source databases. ABVS scores are calculated for a calendar month for each FSC and for all FSCs at the DSC, and will remain in effect until the next monthly update.

(3) Data Sources. The quality performance data is retrieved from the DLA Customer Depot Complaint System (CDCS) and the System for Analysis of Laboratory Testing (SALT). The delivery performance data is retrieved from the Standard Automated Materiel Management System (SAMMS) Active Contract File (ACF), the DLA Operations Research Office's archived closed and open contract file (ALLACF) and a file containing contracts closed within the last 6 months.

(d) Use in source selection.

(1) Past performance information is an indicator of performance risk. Contractors will be scored on the basis of their past performance in the solicited FSC, and all FSCs for which they have a history at the DSC. No minimum ABVS scores will be established to dictate award eligibility, technical acceptability, responsibility or nonresponsibility.

(2) When the solicitation includes an ABVS provision, the contracting officer shall use the ABVS score in a comparative assessment of offers. The contracting officer should not rely solely on the performance score and should consider reviewing the data used to construct the performance score if the circumstances of the procurement dictate (e.g., significant price differential or close scores).

(3) ABVS requires the contracting officer to exercise business judgement. ABVS does not rate or rank offered price. When the offeror with the highest ABVS score is not the lowest price, a trade-off decision must be made. **Other considerations** in the trade-off decision **should** include: item designation as a weapon-system or personnel support item; inventory supply status and required delivery schedule; limited sources of supply and industrial base concerns; dollar difference between the low technically acceptable offeror and a higher-priced, higher scored offeror, and the presence of new offerors.

(4) Each DSC may establish a minimum volume of business below which an offeror will not be scored. An offeror with insufficient performance history in the solicited FSC will be evaluated based on the performance score for its cumulative performance history in all FSCs at the Center. Center-wide scores are not as relevant as FSC scores for performance required under the anticipated contract. For this reason, a higher Center score may not represent lower performance risk than a lower FSC score. Care should be taken when making trade-off decisions based on Center versus FSC scores.

(5) The contracting officer should also consider the volume of business on which the performance score is based as a measure of confidence that the score indicates performance risk on future contracts. When a minimum level of business has not been established for an FSC, award to an offeror with a greater level of business activity and the same or lower score, at a higher price must be approved at a level above the contracting officer. However, an offeror that satisfies the minimum level of business requirement can not be displaced by an offeror with a greater level of business activity and the same or lower score, at a higher price.

(6) An offeror with no performance history in any FSC procured by the center will not be scored, and will be considered a "new offeror." **See FAR 15.305(a)(iv) regarding treatment of offerors without a record of relevant past performance.** However, the lack of a score does not preclude the contracting officer from making an award to one of these offerors. New offeror status will not be grounds for award disqualification. A new offeror may represent lower performance risk than offerors with marginal or poor performance scores and may be more favorably considered than scored offerors. Contracting officers should use both the ABVS FSC score and the average ABVS FSC score to determine the relative risks of scored offers and new offerors.

(7) Price related evaluation factors (e.g., Buy American Act evaluation factors, Small Disadvantaged Business (SDB) evaluation preferences, transportation factors, delivery evaluation factors, etc.) shall be added to the applicable offered price, and the evaluated price must be used in determining the trade-off of price for past performance. ABVS shall not be a reason for waiving application of the SDB preference.

(8) Each center is responsible for establishing internal review procedures and controls for ABVS awards. Dollar thresholds for higher level review will be established locally. There is no dollar limit above the lowest offered price that can be paid on awards using ABVS. Some award decisions will be more difficult than others. In those cases, it may be beneficial for the award decision to be a team effort until best value award decisions becomes a routine business practice.

(9) When the DSC uses ABVS for source selection, each offeror's performance score is confidential source selection information during the month in which it is effective, and as such, is protected from release under the procurement integrity rules (see FAR 3.104-4 and 3.104-5). The score is available only to the business entity to which it applies. The score and all related data must carry a restrictive legend substantially the same as the following: "Confidential Contractor Information - for Official Use Only." This legend must appear on all hard-copy printouts. Release of ABVS information to any other Governmental entity, including any other DSC, must have the concurrence of the

local counsel. Release to any other private entity shall be strictly limited, have the concurrence of the local counsel, and be in accordance with Freedom of Information Act (FOIA, 5 U.S.C. 552) guidelines (see FAR Part 24.2, Freedom of Information Act, and DFARS 224.2, Freedom of Information Act). Any FOIA decision to release performance data to other contractors will be made on a case-by-case basis.

(e) Data review and access.

(1) Quality nonconformances and delinquencies are shared with contractors through routine contract administration as they arise. In addition, each DSC must allow offerors the opportunity to review and challenge their negative data prior to its use in source selection. Contractors will be provided access to their negative past performance data via the most favorable means available to the DSC (i.e., electronic bulletin board, electronic data interchange). Contractors shall also be notified of the date on which the data will be used and the method for challenging the data.

(2) It is in the Government's interest to identify and resolve as many challenges as possible prior to using the data in source selection. Each DSC shall determine an appropriate challenge period to accomplish this. All negative performance data used to calculate the ABVS score will be made available to contractors, and should not be used in source selection for at least 14 days. In addition to the data used to calculate the ABVS score, DSCs should provide contractors access to quality nonconformance data that falls within the 1 month offset period, and delinquency data that falls within the 2 month offset period (e.g., CLINs shipped after the contract delivery date; CLINs not shipped 31 to 60 days after the contract delivery date; and CLINs shipped on-time but the quantity is not in accordance with the Variation in Quantity Clause). Delinquencies aged 30 days or less will not be available for data verification unless they are established as contractor caused.

(3) Contractors who challenge their performance data must provide evidence that substantiates their claim to the ABVS Administrator. Challenged data that has been investigated and validated prior to the next monthly ABVS update will be reflected in the new score. (Corrections to data that fall within the offset period are not considered in that month's score.) Challenges that are received before the end of the challenge period, but are not resolved prior to the next monthly update will be flagged as challenged. The challenge flag alerts the contracting officer to look beyond the ABVS score; it shall not be used to eliminate any offeror from award consideration.

(4) The challenge period for the performance data used to calculate the ABVS score for a particular month ends the day before the new score becomes effective. (For example, the challenge period for the performance data used to calculate the October score ends on 30 September). However, contractors may challenge negative data at any time. For challenges received after the challenge period ends, the current month's score will only be flagged if and when the challenge is validated, or at the discretion of the ABVS Administrator. The subsequent month's ABVS score must be flagged as challenged unless the challenge is resolved in the interim. Once an ABVS score is flagged, it will remain flagged until the challenge is resolved. Challenges to data that falls within the offset period will not be flagged since that data is not reflected in the ABVS score.

(5) The ABVS Administrator shall make every effort to resolve data challenges within ten working days. If the contractor and the ABVS Administrator can not arrive at a mutual agreement on challenged data, it becomes disputed data. Disputes which cannot be resolved will be elevated. Authority for resolution of disputed data is one level above the contracting officer. Award decisions resulting from reliance on disputed data must also be approved one level above the contracting officer.

(f) Award justification. Contract files must be documented with the rationale supporting all award decisions, except those to the lowest priced and highest scored offer. The award decision must demonstrate how paying more than low price reduces performance risk. The award justification must be commensurate with the price difference between the awardee and the low offeror, i.e., the greater the difference in price, the stronger the award justification must be. There are several preprinted award justification forms available to assist with the documentation process. These forms can be supplemented with additional information as necessary.

(g) Synopsis. Commerce Business Daily synopses of solicitations made under this subpart shall indicate that, while price is a significant factor in the evaluation of offers, the final award decision will be based upon a combination of price and past performance.

(h) Solicitation provision. When ABVS is used in source selection, the contracting officer must include in the solicitation a provision that specifies:

(1) Award will be made based on a comparative assessment of offerors' prices, and past performance;

(2) Relative importance of price and past performance, (See FAR 15.304(e);

(3) Timeframe over which past performance will be evaluated;

(4) Sources of the performance data;

(5) Other factors considered in the price/performance trade-off decision;

(6) DSC focal point (address and telephone number) for questions/challenges;

(7) Discrepant data resolution process;

(8) A statement the award may be made to other than the low priced, technically acceptable offeror.

(i) Program administration/responsibilities.

(1) The ABVS Administrator is responsible for: controlling the weighting of relative importance of quality and delivery performance by FSC; receiving, tracking, and responding to contractor challenges; and controlling the DPACS challenge flag.

(2) The ABVS Administrator is the DSC focal point for any questions, requests for information or data access, and data challenges. Contractors may challenge data discrepancies in the DSC records by submitting documentation that identifies the questionable contract number and CLIN and evidence supporting the challenge to the Administrator.

(3) Upon receipt of a properly documented challenge, the Administrator will make every effort to expeditiously resolve the challenge. There will be instances where the Administrator has sufficient information to resolve the matter. In cases where the Administrator is unable to resolve the matter, a copy of the challenged data will be forwarded to the responsible functional office (the office of primary responsibility (OPR)) for a decision. The OPR, represented by the responsible contracting officer, administrative contracting officer, or quality specialist must investigate the challenge and determine whether it has merit within 5 days of receipt. When the OPR determines the challenge can not be supported, the Administrator will be advised and the challenge flag removed. When the OPR determines the challenge has merit, the OPR is responsible for processing corrective updates to the appropriate databases, and providing to the Administrator confirmation of the corrections to the database. (See 15.304(e) for challenge protocol). The Administrator will have the ability to recalculate the ABVS score off-line upon request.

(4) In rare instances, the ABVS Administrator can exclude certain elements of past performance from the ABVS score. This may occur, for example, where a contractor has introduced a new manufacturing process or management system that will eliminate the previous problems and where the contractor is able to provide information from other customers supporting the improved performance. The OPR responsible for quality shall review and validate any corrective action that the contractor has taken and provide a recommendation as to whether the past performance should be excluded. Exclusion of past performance data is at the sole discretion of the DSC and must be approved by the chief of the contracting office.

(j) Other uses for ABVS.

(1) Options. When exercise of an option is contemplated, the contractor's current ABVS score should be considered in determining whether exercising the option is the most advantageous method of satisfying the Government's needs. The contracting officer's decision to exercise an option at a higher price than what may otherwise be available (see FAR and DLAD 17.207(e)(90)) should be based on the same evaluation factors that applied to the basic award;

(2) When determining whether to obtain a preaward survey.

15.305 Proposal Evaluation.

(a)(4) The Center Senior Procurement Official is delegated authority to determine whether technical evaluators may have access to cost information.

SUBPART 15.4 - CONTRACT PRICING

15.401 Definitions.

"Cost or pricing data" also encompasses decrement factor information.

"Decrement factor information" is the historical data necessary to determine the average difference between vendors' and subcontractors' proposed prices and the actual prices negotiated by the contractor with a specific supplier, all suppliers, or suppliers for a specific contract, commodity, or commodity group.

15.403 Obtaining cost or pricing data.

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(b) Exceptions to cost or pricing data requirements. The existence of an exemption or a waiver does not alter the requirement for performing some form of price or cost analysis to ensure price reasonableness (see FAR 15.404-1(a)(1) and (2)) and for documenting the results (see FAR 15.406-3(a)(11)).

(c) Standards for exceptions from cost or pricing data requirements.

(1) Adequate price competition. In an effort to decide whether additional information is necessary to determine the reasonableness of the otherwise successful offeror's price in accordance with FAR 15.403-1(c)(i)(B) and (ii)(B), the contracting officer shall review it in comparison to prior prices paid, considering any changed conditions (see FAR 15.403-1(c)(iii)).

(3) Commercial items. See 15.404-1(b)(92).

(4) Waivers. If none of the statutorily-sanctioned exemptions (FAR 15.403-1(b)(1) through (b)(3) and (b)(5) exist, but the procurement cannot be foregone, the head of the contracting activity may, in an exceptional case, after review of the information submitted pursuant to the procedural requirements of 15.403-1(c)(4), waive the requirements for submission or certification of cost or pricing data under one or more of the following additional conditions:

(i) there is insufficient data on which to base either an exemption and/or a price reasonableness determination,

(ii) the Government was unable to obtain cost or pricing data in the face of an offeror's refusal, or

(iii) the price is determined unfair and unreasonable. Notwithstanding the existence of a blanket waiver, (including those at DFARS 215.403-1(c)(4)(A) and (B)) the contracting officer must accomplish the price analysis required by FAR 15.404-1(a) in an effort to ensure that the overall price is fair and reasonable.

(A)(90) The DoD waiver of submission of certified cost or pricing data from the Canadian Commercial Corporation (CCC) (DFARS 215.403-1(c)(4)(A)) states that the integrity of the assurance of fair and reasonable prices by the Government of Canada can be assumed. However, proposal analysis is required (FAR 15.404-1. Where price analysis indicates a fair and reasonable price significantly different than that offered by CCC, the contracting officer should initiate discussions with the CCC to request confirmation of the price reasonableness determination. A brief explanation of why the confirmation is being requested, i.e., the results of the price analysis, should accompany the request.

15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) If the contracting officer cannot determine that an item claimed to be commercial is in fact commercial and no other exception or waiver applies, the contracting officer shall require submission and subsequent certification of cost or pricing data. See additional guidance at 12.102(90).

(i) Pricing a contract award (other than an undefinitized contract action).

(90) In determining whether an **award** meets the \$500,000 **Truth in Negotiations Act (TINA)** threshold for requiring cost or pricing data, consider the **basic contract quantity (or estimated value of an IDC base period), plus the value of either a quantity option or the estimated value of a period option that will be exercised at time of award.**

(ii) Pricing **a contract** change or **other** modification **exceeding the \$500,000 threshold.**

(90) The requirement for [certified] cost or pricing data **applies to actions exceeding the \$500,000 threshold of the following types:**

(A) Exercise of priced options that **were not** evaluated at time of award (**in accordance with 17.206(b)(90), an unevaluated option exceeding \$500,000 for which TINA applies shall be specified as an undefinitized option**),

(B) Definitization of undefinitized options,

(C) Definitization of other undefinitized contract actions, and

(D) Repricing actions, e.g., an actual cost type EPA, under Changes clause, claims, price reopener, and prospective repricing.

(91) The requirement for cost or pricing may be excepted for the following **postaward** actions:

(A) Exercise of priced options which were evaluated at time of award,

(B) **Price adjustment under an** EPA based on **an** established price or on **an** index, and

(C) Actions for which an exemption is applied (see FAR **15.403-1(b)(1) through (b)(3) and (b)(5)**), e.g., when the price for an option is based on the price of a basic award for the same or similar item(s) for which one of the statutory exceptions apply; or when an EPA or other repricing action is based on a change in an established price (includes **instances where** cost or price indexes reflecting **a change in a market is used**), or **a change in a** price set by law or regulation.

(b)(90) Contracting officers shall,

(i) identify in solicitations, any options which are subject to the requirement for cost or pricing data prior to award which are expected to be subject to such requirement prior to the exercise;

(ii) specify in solicitations where applicable, that the offeror must specifically identify on any certificate (**FAR 15.406-2**) required to be submitted and any evaluated option price(s) covered by the certificate; and,

(iii) identify in solicitations and resulting contracts any options expected to exceed \$500,000 which the contracting office does not plan to include in the preaward pricing evaluation and stipulate that as a prerequisite of exercise, they are subject to the submission and certification requirements of P.L. 87-653 as implemented by the applicable clause (FAR 52.215-20 or 52.215-21, whichever will be included in the contract).

15.403-4(b)(91) Cost or pricing data for indefinite quantity and requirements contracts.

FAR 16.503 and 16.504 state that estimated total quantities to be ordered under requirements and indefinite quantity contracts respectively should be as realistic as possible. This information, along with the estimated number of orders and variability in order quantities, is required for realistic contract pricing. To avoid delays when contract price data must be obtained under these types of contracts, the solicitation should provide this information and specify that--

(1) It should be used by the offeror in developing the unit price(s) proposed;

(2) The price proposal must include an explanation of the production quantity and period used in developing the proposed unit price(s) (The planned production quantity may be greater than, equal to, or less than the maximum quantity of an indefinite quantity contract/total estimated quantity of requirements contract, exclusive of any contract options.); and

(3) The offeror is requested to quantify any reduction in the offered unit price(s) available if the minimum order quantity were raised and/or a guaranteed minimum contract quantity established.

15.403-5 Instructions for Submission of Cost or Pricing Data or Information Other Than Cost or Pricing Data.

(b)(2) Solicitation instructions for submission of cost or pricing data shall include or **incorporate by** reference in Section L, the **Table 15-2 general** instructions, **cost elements** and format requirements specified at **FAR 15.403-5(b)(1)** and shall require identification of decrement factor information, defined at **15.401**, as part of the data submission requirements.

15.404 Proposal analysis.

15.404-1 Proposal analysis techniques.

(a) General.

(90) The cost/price analysis element shall provide:

(1) A price or cost/price analysis report, as appropriate, for:

(i) all sealed bid acquisitions of \$500,000 or more where a sole responsive bid is received, and

(ii) all negotiated acquisitions (including awards to the Canadian Commercial Corporation) of \$500,000 (**\$200,000** for FPI (see 8.602(a)(90)(iii))) **or more**, where adequate price competition was not received (see **FAR 15.403-1(c)(1)(i)**), unless the contracting officer performs a price analysis (including, for rebuys, a comparison to prices paid for the same item in accordance with **15.404-1(b)**) which documents that the price is fair and reasonable and is:

(A) based on adequate price competition (**FAR 15.403-1(c)(1)(ii) or (iii)**),

(B) set by law or regulation (**FAR 15.403-1(c)(2)**), or

(C) **for a commercial item** (**FAR 15.403-1(c)(3)**).

(2) A price analysis or cost/price analysis, as appropriate, for any other acquisition where assistance is deemed necessary by and requested by the contracting officer.

(3) Recommendations and coordination on all planned actions involving the "resolution" and "disposition" (see **15.406-3(b)(91)b(2) and (3)** respectively) of defective pricing and other "reportable" audits, and instances of suspected overpricing.

(4) All reports of reviews covering multiple line items shall include comments on the results of an assessment for unbalanced bids or offered prices (**FAR 15.404-1(g)**).

(91) The contracting officer (the price analyst and/or value engineering/other technical specialist when requested to furnish an analysis of the proposal), shall identify or have identified from existing data bases and/or files, any independent Government estimate {"should cost"} that had been performed; and include in the proposal evaluation report and prenegotiation briefing memorandum, comments as to the extent of utility of the IGE results as analytical or corroborative information for determining price reasonableness, establishing negotiation objectives, and for contract negotiations.

(92) If the contracting officer determines that a procurement is for an item that meets the commercial item definition at FAR 2.101, the contracting officer cannot determine the offered price to be fair and reasonable on that basis alone. Some form of proposal analysis is also required.

(b) Price analysis.

(90) Whenever cost or pricing data or established **catalog/market** price exemption data is obtained, the analysis shall also address the reasonableness of the offered price in comparison to prior prices paid for the item.

(2)(ii) When a comparison or trend analysis to prior prices is used, the rationale and amount of allowance (negative, zero, or positive adjustment) for each factor cited in the FAR shall be included in documentation of the price reasonableness determination, along with a statement of how these prior prices were determined reasonable. **The contracting officer must consider the nature of the Government's requirement (e.g., quantities being acquired, how the item is managed) compared with the circumstances under which prices were paid by another customer (e.g., quantities being acquired, whether an urgent requirement drove the price up). The contracting officer should take maximum advantage of the Government's potential purchasing power and should expect terms and prices at least equal to those available to commercial or other customers that have similar size and influence in the market.**

(2)(iv) When a price appearing in a contractor catalog or price list is utilized to determine price reasonableness, the contracting officer shall include in the reasonableness determination documentation of the steps taken in confirming that the price list is current and depicts prices at **which sales** are currently being made or were last made. **See 12.102(90) for guidance on determining if a procurement is for an item that meets the commercial item definition at FAR 2.101.**

(2)(v) However, the standard price, budgetary estimates, and provisioning estimates are invalid bases for comparative price analysis and price reasonableness determinations.

(c) Cost analysis.

(90) When a contractor catalog or other price developed using proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology is utilized to determine price reasonableness, the contracting officer shall include in the price reasonableness determination documentation of the steps taken in confirming that the rates and factors and/or formula pricing methodology and catalog prices are current and have been reviewed and determined reasonable, the review date, and the office accomplishing that review (i.e., normally the field ACO). Use of this technique also requires documentation that the direct material quantities/prices, direct labor hours, and/or other bases against which the rates and factors are applied have been reviewed and determined reasonable.

(c)(2)(iii) The comparison may be to actual costs incurred for the same item or for a similar item (with any necessary adjustments to achieve comparability of market conditions, quantities, time periods, and terms and conditions) by the same or another supplier.

15.404-2 Information to support proposal analysis.

(c) Audit assistance for prime contracts and subcontracts.

(90) For price proposals involving significant subcontracted amounts, requests for field pricing reviews should solicit decrement factor information (see **15.401**) relevant to the award. Where extreme urgency necessitates award prior to completion of a subcontract review, negotiation of an appropriate decrement would obviate the need for a reopener clause (see DFARS **215.407-5-70(g)(2)(vi)**) or an undefinitized contractual instrument.

(d) Deficient proposals. When the offeror refuses to submit or certify cost or pricing data the reasons why the data are needed and why they were not provided should be discussed with the offeror and confirmed in writing prior to escalation to higher Government and **offeror** management levels. In the event the efforts of the contracting officer and higher management are unsuccessful in obtaining the data, the matter shall be escalated, after review by the local pricing and contract review elements, to the head of the contracting activity (HCA) along with the following information:

(1) What steps were taken to:

(i) Secure essential cost or price data.

(ii) Secure the contractor's cooperation, and

(iii) Assure the contractor that the information furnished by the contractor would be adequately safeguarded.

(2) An explanation as to why an exemption cannot be based on current or recent prices for a similar item or any of the other bases for exemption (**FAR 15.403-1(b)(1) through (b)(3) and (b)(5)**) to the requirement for cost or pricing data.

(3) The **offeror's** written refusal to provide the cost or pricing data or a statement explaining why the contractor refuses to provide a written refusal.

(4) An explanation of whether, and under what circumstances, the offeror furnished cost or pricing data for prior contracts with this or another contracting office.

(5) The identification and results of attempts (including attempts made by the auditor, the ACO, and other contracting offices) to secure cost or pricing data concerning the current and prior contract actions, including date(s), contract award(s), and the names and organizational level of participants in the negotiations.

(6) A copy of the price analyses performed, which shall include a comparison with prior prices and an independent Government estimate, and results of the price reasonableness determination.

(7) Substantiation that the item is mission essential.

(8) The alternatives to proceeding with the acquisition.

(9) The suggested course of action considering the alternatives in (8) above.

Negotiations with top management of the firm shall be conducted by the CCO and, as appropriate, by the Commander (Administrator, DNSC, **Director, DAPS**). When a contractor/subcontractor has refused to provide the required data for the first time, or when the Commander (Administrators, DNSC, **Director, DAPS**) has not personally negotiated with the contractor/subcontractor recently to obtain such data, the Commander (Administrator, DNSC, **Director, DAPS**) should attempt to secure the data. The Commander (Administrator, DNSC, **Director, DAPS**) shall execute a detailed memorandum setting forth the rationale for any decision not to personally negotiate for the data. This memorandum shall be included in the contract file, along with the above information and any Determination and Findings waiving the cost or pricing data requirements of 10 U.S.C. 2306(f)(1), as implemented by **FAR 15.403-4**. In the event of waiver where the price is determined unfair and unreasonable or could not be determined fair and reasonable, furnish an information copy of the Determination and Findings to HQ DLA, ATTN: **DLSC-PPB**.

15.404-4 Profit.

(c) Contracting officer responsibilities.

(2)(c)(2) Approval of an alternate structured approach required for other than awards cited in DFARS 215.404-4(c)(2)(C)(1) may be redelegated not lower than the chief of the contracting office. The Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division, without power of redelegation. Promptly upon execution, a copy of each approval shall be furnished to HQ DLA, **DLSC-PPB**.

(2)(e)(70) Include documentation of the rationale and derivation of the profit factors and amounts on the DD Form 1547 approved at the time of the prenegotiation briefing in the prenegotiation briefing memorandum or attach it thereto, e.g., as a separate attachment or as part of the price/cost analysis report.

15.404-73 Alternate structured approaches.

(c)(1) The DD Form 1547, Record of Weighted Guidelines Application, shall be used whenever an alternate structured approach is utilized. When a zero weight is assigned to one or more of the factors specified in DFARS 215.404-71-1(a) or additional factors are utilized, complete rationale shall be documented.

15.404-71-4 Facilities capital employed.

(b)(2) See DFARS 215.404-71-4(b)(2) for the treatment of Facilities Capital Cost of Money on production special tooling and production special test equipment.

15.405 Price negotiation

(a)(90) Occasionally, the price is not as close to the negotiation objective as the contracting officer would like, but it cannot be judged unreasonable. In such cases, the

file should contain a positive statement that the price is **either** considered fair and reasonable under the circumstances **or cannot be determined reasonable**, and enumerate the circumstances. For every price reasonableness determination, the contracting officer **should** accomplish price or cost/price analysis, as necessary, to determine the price either to be reasonable or unreasonable. The offeror's refusal to provide and/or certify cost or pricing data or information other than cost or pricing data does not relieve the contracting officer from the requirement to perform a proposal analysis; nor does such refusal provide a sufficient basis for determining the price unfair or unreasonable.

(d)(90) The referral of a contract action to higher authority for resolution of a price, profit or fee that the contracting officer deems to be unreasonable may be any level above the contracting officer, including the Commander (Administrator, DNSC and **Director, DAPS**). **For estimated awards over \$500,000 where an offeror refuses to provide cost or pricing data required pursuant to FAR 15.403-4, and/or a price that can be determined fair and reasonable**, the **chief of the contracting office** shall personally negotiate with the **offeror or contractor in an attempt to secure cost or pricing data and/or delete** those elements of the offer that render the price unreasonable. If **unsuccessful**, a detailed memorandum setting forth the **results** shall be forwarded with the referral to **the head of the contracting activity for appropriate action. (See 15.404-2(d)).**

15.406-1 Prenegotiation objectives.

(b)(90) Whenever it is decided that the contract auditor will not be participating in the prenegotiation and/or price negotiation meeting for a contracting action which involved an audit, the contracting officer shall document in the prenegotiation briefing memorandum (PBM) and/or price negotiation memorandum (PNM), as applicable, the results of discussions with the auditor or other basis for such decision.

(b)(91) Prior to the beginning of any contract price negotiation, the award of a competitive negotiated contract, or the disposition of any other recommended contract action cited below, a briefing of the proposed negotiation, award, or settlement shall be presented to the **chief/acting chief** of the contracting office (CCO) for approval:

(1) Every award exceeding \$25,000 (\$100,000 for **ICPs**) of a letter contract, undefinitized BOA order or other undefinitized instrument. (The responsibility in paragraph (b)(91) above is delegable only for awards that do not exceed \$250,000 (**ICPs** only), without power of redelegation, to **one level (two levels for ICPs)** below the CCO, and, **for ICPs only, any other awards for** filling a backordered or nonstocked requirement meeting DLA's criteria for heightened management (see 17.7404-1(a));

(2) Every definitization exceeding \$100,000 (\$250,000 for **ICPs**) of a letter contract, undefinitized BOA order, or other undefinitized instrument. **(For ICPs only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed \$500,000);**

(3) Every **other negotiated contract pricing, repricing and final pricing** action that exceeds \$100,000, (\$500,000 for the **ICPs**). (For **other than ICPs**, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed \$250,000. **For ICPs, to one level below the CCO; two levels when the action does not exceed \$1,000,000);**

(4) "Resolution" of reports of defective cost or pricing data and other "reportable" audits (see **15.406-3(b)(91)(b)(1)**). (For **ICPs** only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to **two levels** below the CCO if the value of the action does not exceed \$100,000); and

(5) Any action not cited in (1) thru (4) above which requires HQ DLA (**DLSC-P**) review and approval. (The responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO.)

Note that pursuant to (1)-(5) above, (a) delegates must occupy a supervisory chief or deputy chief position at the immediately lower organizational (not procurement functional) level (or, for ICPs, at the either the first or second lower organizational level) and be certified at Level III in the Contracting Acquisition Career Field; (b) chief and their deputy/deputies are deemed to be at the same organizational level and (c) dollar value determinations shall be made IAW 1-690-6(a).

(b)(92) At a minimum, the briefing shall cover:

(1) The acquisition situation, including any unique features.

(2) Previous price history.

(3) Where price negotiations are contemplated, the analytical methods utilized in establishing the prenegotiation objectives (i.e., price, improved delivery schedule, etc.):

(i) For proposals **not** involving cost or pricing data **or a cost breakdown**, discuss and include a written schedule showing the buildup of the offeror's price and any significant differences between the proposed price negotiation objectives (i.e., minimum, target, and maximum prices, **which should be prepared independent of the current offered prices**) and the proposed price, and any audit, ACO, or cost/price analyst recommendations. Also discuss when there are dissimilarities between the item or quantity offered and the commercial item for which a catalog price exists;

(ii) For acquisitions to be awarded based on cost or pricing data, or cost realism data, discuss the buildup of the offeror's price by element of cost and profit, and any significant differences between the proposed price negotiation objectives (i.e., includes minimum, target, and maximum objectives for costs, profit, fee, and price) and the contractor's proposed price, audit findings, technical report comments, ACO recommendations, and cost/price analyst recommendations, together with rationale supporting the overall price negotiation objectives. Include a comparative schedule showing each element of cost and profit included in the contractor's proposal; the recommendations contained in the audit, technical, and field pricing reports; any independent Government estimate (IGE), the cost/price analyst's recommendations; and the price negotiation objectives.

(iii) Negotiation plan (i.e., phone or in person).

(iv) Anticipated negotiation problems (e.g., contingencies, required deletions or changes in contract clause, etc.) and proposed solutions.

(4) Where price negotiations are not contemplated, the analytical methods utilized in determining price reasonableness:

(i) If award is to be made as a result of initial competitive offers received, include a written schedule comparing the offerors' prices, price history, and any IGE.

(ii) If award is to be made following BAFOs received, address the nature and results of discussions and offers, include a written schedule comparing the initial offers and BAFOs if exemption data or cost/cost realism data are obtained, also include the requirements (excluding prenegotiation price objectives) of (3)(i) or (3)(ii) above respectively.

(iii) If award is to be made based on competitive prices of current or recent awards for the same or comparable items, include a written schedule comparing the offered prices to such recent competitive award prices and any IGE.

(iv) For other sole offers, include a written schedule showing the price for each line item (and offeror's buildup by element of cost and price, if known, with a written comparison to any significant differences in the audit findings or review recommendations).

(b)(93) A memorandum summarizing the principal elements of the briefing prenegotiation objectives, the attendees, and the results of the briefing (including any significant comments or specific recommendations made by briefing attendees) and attaching the price schedule used in the briefing, shall be prepared for signature by the approving official.

(b)(94) The appropriate prenegotiation approval authority **or delegatee**, shall be notified of the need for any significant change in negotiation objectives. A copy of the approval of revised price objectives shall be made an attachment to the PBM.

(b)(95) The following are exempt from the requirement for prenegotiation/preaward briefings:

(1) Perishable subsistence acquisitions.

(2) Subsistence commodity market items that are subject to marketing exigencies, such as coffee, flour, and salad oil.

(b)(96) The following exceptions are authorized to the requirements for a prenegotiation briefing to the official specified at **15.406-(b)(91)**:

(1) **DESC** petroleum acquisitions not involving a cost proposal audit, that consist entirely of unrelated line items that are consolidated solely for administrative purposes. The briefing in such cases may be conducted at a level lower than the chief of the contracting office when no single line item is valued \$200,000 or more, even though the total acquisition is valued \$500,000 or more.

(2) For **DSCP**, subsistence actions cited at **15.406-1(b)(91)** may be delegated, regardless of dollar value, by the chief of the contracting office to the Defense Subsistence Region commanders, with redelegation authorized to the purchasing division chiefs.

(3) Orders against Federal Supply Schedules or mandatory orders placed under the Javits-Wagner-O'Day Act (FAR Subpart 8.7).

15.406-3 Documenting the negotiation.

(a) While excessive detail should be avoided, the PNM, standing alone, must convince all reviewers that the price negotiated (or awarded without negotiations) was reasonable, given the circumstances of the particular acquisition. Although the content will vary depending on the magnitude of the contract, contract type, cost or pricing data obtained, the extent of negotiations, etc., a standard format should be used. The PNM should have the following subdivisions: "Subject," "Introductory Summary," "Particulars," "Procurement Situation," "Negotiation Summary," and "Miscellaneous." For acquisitions involving cost or pricing data, the Negotiation Summary shall include a schedule reflecting each element of cost and profit in the contractor's proposal, the approved negotiation objectives, any revised proposal or negotiation objective, and the final negotiated amount. A copy of the PBM, along with any changes thereto, shall accompany and be listed as an attachment to the PNM.

(11) The price reasonableness determination shall be documented in the contract file and in appropriate automated price history records (e.g., SAMMS price reasonableness codes). It is essential to accurately complete the price reasonableness codes, because when conducting price analysis on future proposed prices for the same or similar items, the contracting officer cannot consider a comparison of prior contract prices with current proposed prices to be valid if the prior price was unreasonable (see FAR 15.404-1(b)(2)(ii)).

(b)(90)(1) A copy of the PNM shall **also** be furnished to the **local** cost/price analyst, value engineer, and/or other technical specialist that was involved in **any** price review or negotiation.

(b)(90)(2) When an IGE was furnished for assistance in proposal evaluation, the contracting officer should assure information on its utility **in making the award** is included in the **PNM**, the Contracting Technical Data File and any other local data bases for future reference. Additionally, the contracting officer should forward this information, along with any specific suggestions based on lessons learned on the buy, to the office(s) preparing and furnishing the IGE.

15.407-1 Defective cost or pricing data.

(b)(7)(1) The 26 U.S.C. 6621 quarterly interest rate cited in the corresponding FAR paragraph, is published in an Internal Revenue Bulletin the Federal Register during the third week of March, June, September and December. The rate and information on its application is forwarded via a PROCLTR and is also available on the worldwide web at <http://www.irs.treas.gov/news/nandf.html>. This information may also be obtained from the local cost and price analysis branch/element.

(d)(90) If, following review by the pricing element and legal (see 1.691(a)) and approval in accordance with **15.406-1(b)(91)**, the contracting officer's planned settlement objective is less than 70 percent of the amount reported by the GAO, DoD IG, or DCAA, a copy of the approved briefing memorandum, including the audit and pricing reports and

other relevant documentation (see **15.406-1(b)(91)(5)** and **(93)**), shall be furnished for receipt in HQ DLA, ATTN: **DLSC-PPB** at least **10** working days prior to initiating settlement action with the contractor.

15.407-5 Estimating systems.

Refer to DFARS 215.407-5-70, Disclosure, maintenance, and review requirements, **215.407-5-70(g)(2)(vi)** and **(3)**. See **also** subpart 17.92.

(b)(91) Follow-up on contract audit reports.

(a) Responsibility of the chief of the contracting office. The contract follow-up official for DLA contracting offices (the Executive Director, Procurement Management) has designated the chief of the contracting office as the official responsible for full and effective implementation of the requirements of DoDD 7640.2, Policy for Follow-up on Contract Audit Reports (attachment 2 of PROCLTR 96-41). A local contract audit focal point (the cost/price analysis element, where one exists) shall be established to assist in discharging the tracking and reporting requirements of the Directive (see **15.406-3(b)(91)(c)**).

(b) Responsibilities of contracting officers.

(1) Promptly upon receipt of a contract audit report involving indirect cost rates, defective pricing, incurred costs, final pricing, terminations, claims, cost accounting standards, and reviews of a contractor's system the contracting officer shall furnish a copy of the report to the local contract audit followup focal point, and, if "reportable" (see DoDD 7640.2, paragraph F.3.), a detailed milestone plan for timely "resolution" and "disposition" (see **15.406-3(b)(91)(c)(2)**). Updated milestone plans, reflecting the actual dates milestones were achieved and revised target dates, shall be forwarded to the local contract audit follow-up focal point at the time any milestone is achieved or missed.

(2) Contracting officers shall "resolve" any differences between their planned action and that recommended by the contract audit activity for all "reportable" audits. The contracting officer shall accomplish the required "resolution" promptly, and in no case later than 6 months following issuance of the audit report (P.L. 96-527). "Resolution" occurs upon approval obtained, in accordance with local review procedures, of the planned negotiation/settlement objectives.

(3) The contracting officer shall endeavor to accomplish disposition of all audit reports as soon as possible after "resolution." "Disposition" should normally occur within 12 months following audit report issuance. As stated in Enclosure 1 to DoDD 7640.2 a reportable audit is closed when "disposition" occurs, i.e.:

(i) The contractor implements the audit recommendations of the contracting officer's decision; or

(ii) The contracting officer negotiates a settlement with the contractor and a contractual document has been executed; or,

(iii) The contracting officer issues a final decision pursuant to the Disputes Clause, and 90 days elapse without contractor appeal to the Armed Services Board of Contract Appeals (ASBCA). (Should the contractor appeal to the Claims Court within the 12 months after final decision, the audit must be reinstated as an open report in litigation); or

(iv) A decision has been rendered on an appeal made to the ASBCA or U.S. Claims Court and any corrective actions directed by the Board or Court have been completed and a contractual document has been executed; or

(v) Audit reports have been superseded by, or incorporated into, a subsequent report; or

(vi) Any corrective actions deemed necessary by the contracting officer have been taken, so that no further actions can be reasonably anticipated.

(4) In addition:

(i) Upon completion of the "disposition" action, the contracting officer shall promptly furnish a memorandum of actions taken to the local contract audit follow-up focal point, the ACO, and to the auditor (DoDD 7640.2, paragraph F.5.a.).

(ii) When award does not result to the contractor whose offer was subject to a preaward audit report (due to cancellation, award to a competitor, etc.), the contracting officer shall promptly provide written notification to the local contract audit follow-up focal point, the ACO, to the auditor (DoDD 7640.2, paragraph F.5.b.).

(c) Responsibilities of contract audit follow-up focal points. The contract audit follow-up focal point is responsible for tracking and reporting the status of audit reports as specified below:

(1) Tracking every contract audit report, excluding "nonreportable audits," using milestone status information furnished by the contracting officer. The current status of each action is to be maintained in a log or similar document that includes all information required by the semiannual contract audit follow-up status report.

(2) Preparing the semiannual report **spreadsheets** of "open" and "closed" audits (formats in DoDD 7640.2) **in MS Excel** for submission by the chief of the contracting office and receipt in HQ DLA, ATTN: **DLSC-PPB**, not later than 10 April and 10 October of each year, along with a current milestone chart on each open audit (see **15.406-3(b)(91)(c)(1)**). Negative reports are required. **Electronically transmit a copy of the report spreadsheets to jerry_gilbert@hq.dla.mil.**

15.408 Solicitation provisions and contract clauses.

(1) *Requirements for cost or pricing data or information other than cost or pricing data. The provision at FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, and the clause at FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications, are for inclusion in solicitations expected to result in definite quantity awards exceeding \$500,000, and including long term contracting arrangements where the base period is estimated to exceed \$500,000. Further, it should be included in solicitations estimated at lesser value when cost or pricing data or information other than cost or pricing data (uncertified or limited data) is likely to be required (see FAR 15.408(1) and (m). This should include procurements of sole source commercial items. For awards subject to TINA, the provision and the clause provide a means for the offeror or contractor to claim that the offered item is commercial, etc. The provision and clause also include examples of additional supporting information the contracting officer may need to request in order to determine that the price is fair and reasonable. This DLAD coverage constitutes the waiver required by FAR 12.302(c) to use terms or conditions that are inconsistent with customary commercial practices.*

(m) *Requirements for cost or pricing data or information other than cost or pricing data - Modifications. See paragraph (1) in this subsection.*

PART 16

TYPES OF CONTRACTS

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TYPES OF CONTRACTS

SUBPART 16.2 - FIXED PRICE CONTRACTS

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16.203 Definitions.

(90) As used in this section---

"Established catalog price" means prices (including discounted prices) recorded in a catalog, price list, schedule, or other record that (a) are regularly maintained by the manufacturer or vendor; and (b) are published or otherwise available for customer inspection.

"Established market price" means a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

"Existing EPA clause" means a clause prescribed in FAR 16.203-4 or DFARS 216.203-4-70, respectively, or a locally developed EPA clause that has been reviewed and approved in accordance with agency procedures (16.203-3(93)).

16.203-1 Description

(a)(90) Adjustment based on established prices. Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items. (DAR Tacking Number 95-D0003, FARS DEV 96-10).

(c)(90) Adjustments based on cost indexes of labor or material. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items. (*DAR Tacking Number 95-D0003, FARS DEV 96-10*).

16.203-2 Application.

(90) Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Government body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index. (*DAR Tacking Number 95-D0003, FARS DEV 96-10*)

(91) Although a specific item or element of cost may require EPA coverage, the contracting officer should **also** determine whether an EPA **clause** should cover the entire end item to take advantage of competitive market forces to moderate price fluctuations. The decision should be based on risk and price analyses of the alternatives, and may be an appropriate element of tradeoff in negotiations.

16.203-3 Limitations.

(90) **A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.** (*DAR Tacking Number 95-D0003, FARS DEV 96-10*). (*See 16.203-1, 16.203-2(90) and 16.203-4(90)*)

(91) **An economic price adjustment (EPA) clause may be planned for use in the event the contracting officer substantiates in documentation included as part of the acquisition plan that the conditions cited in FAR 16.203-3 exist and an EPA provision is required to achieve one of the two objectives stated therein, and/or its use is authorized in this section.**

(92) When the contracting officer determines that **no existing EPA clause satisfies the need for an EPA**, a **new EPA clause may be developed** in accordance with FAR 16.203-4, DFARS 216.203-4-70, and this section.

(93) **Prior to issuance of a solicitation containing a new EPA or revision to an existing EPA clause, the contracting officer shall submit it through the local policy office to HQ DLA, ATTN: DLSC-PPB, for review and approval, along with identification of any options and other EPA to be included.** This approval requirement **also applies to acquisitions of commercial items.** However, it does not apply to a minor, incidental revision to correct or update an **existing** (HQ DLA-approved, locally-developed) EPA clause, provided a copy of the revised clause is furnished to **DLSC-PPB** at the time of decision to include it in the solicitation.

(94) The CCO or designee (not lower than one level above the contracting officer) shall approve any ceiling exceeding ten (10) percent. Such approval may cover more than (1) contract and extend over a stated definite period of time not to exceed two (2) years.

(95) If not included in the EPA clause, the solicitation and contract shall elsewhere contain, and the contracting officer shall assure compliance with, the contractor's warranty that the contract prices do not include allowance for any contingency to cover increased costs also considered by the EPA clause. (When a contract option is also planned see 17.203(d).)

(96) If it becomes apparent that an **existing** EPA clause is clearly justified in a solicitation that did not include one, an (FAR, DFARS, or HQ DLA-approved) EPA clause may be included **by amendment to the solicitation and in any resulting contracts** if all EPA contingencies covered by the EPA clause are removed from **any formerly offered price(s)**.

16.203-4 Contract clauses.

(90) **When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 16.203-1(a)(90) or (c)(90).** Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication,

electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index upon approval pursuant to 16.203-3(91). (DAR Tracking Number 95-D0003, FARS DEV 96-10)

(91) Adjustments based on established **market** prices or **indexes** (*see also (d.) below*).

(i) The contracting officer shall determine the most appropriate international, national, regional, or local area market. The EPA clause included in the solicitation shall identify the index or established market price, the document containing such index or price, and its effective date or period.

(ii) If the contracting officer is unable to identify an established market price or index that satisfactorily reflects economic fluctuations, then the EPA provision included in the solicitation may provide for offeror fill-in to recommend the most appropriate established market price or index (if none, the most appropriate established catalog price), along with the document containing the established price or index and the effective date/period of the established price or index (and, for established catalog price EPA clauses, the identification and amount of any applicable extras, discounts, or rebates used in calculating the contract price). The contracting officer shall select the most appropriate established market price or index identified (if none, the most appropriate established catalog price). The contracting officer may amend the request for proposal (RFP), after requesting and receiving best and final offers, to include this selection.

(iii) In addition, when using an established or published market price clause, include the provision at (d)(iv)(90), after substituting "market price" for the three occurrences of the word "index".

(92) Adjustments based on established catalog prices. An established catalog price-type EPA clause (FAR 52.216-2 or -3, DFARS 252.216-7000 or -70001, or similar locally-developed clause) may be included in solicitations and resulting contracts for an item previously bought without such EPA clause only after the contracting officer determines that neither an index-type or an established market priced EPA is suitable (i.e., the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d) are not met or there is no suitable index or established market price describing the supplies with specificity) and documents in the acquisition plan the results of actions taken in reaching this determination.

(c) Adjustments based on actual cost of labor or material.

(90) An actual cost type EPA clause (FAR 52.216-4 or a locally-developed clause) may be included in solicitations and resulting contracts for an item previously bought without such an EPA clause only after the contracting officer determines that no other type of EPA clause is appropriate and documents in the acquisition plan the results of actions taken in reaching this determination. A provision shall also be included in the solicitation and any resulting contracts that--

(1) Identifies the specific direct cost factor and dollar amount needed to establish the baseline from which adjustments will be made, regardless of whether cost or pricing data was submitted;

(2) Incorporates by reference, the cost principles and procedures in FAR Subpart 31.2 for use as the basis for pricing the baseline and any adjustment under the EPA clause;

(3) Identifies any appropriate markup factors/amounts; and

(4) Provides the methodology for price adjustment calculations.

(d) Adjustments based on cost indexes of labor or material. An index clause may be included in solicitations and resulting contracts only if the contracting officer documents in the acquisition plan, rationale indicating that the acquisition satisfies the requirements of FAR 16.203-4(d) and DFARS 216.203-4(d). The contracting officer shall select the most appropriate index published by the Bureau of Labor Statistics (BLS). Another index may be used provided the contracting officer determines that no BLS index is suitable and documents in the acquisition plan the specific BLS indexes considered, why they were unsuitable, and rationale demonstrating the suitability of the index selected.

(d)(iv)(90) The clause shall specify that: "If the contracting officer determines that the index consistently and substantially fails to reflect market conditions, the contracting officer may amend the contract to specify use of an appropriate substitute index, effective on the date the index specified in the contract begins to consistently and substantially fail to reflect market conditions."

(d)(v)(90) When planning to use an index-type clause which provides for price adjustment, whenever the actual index for a period differs from the projected index for that period sufficiently to trigger a price adjustment, the contracting officer shall ensure that the projected index for each period to be included in the clause at least equals the projected indexes used in pricing the same cost element under the contract.

SUBPART 16.3 - COST-REIMBURSEMENT CONTRACTS

16.306 Cost-plus-fixed-fee contracts.

(c) Limitations.

(2) The D&F required by FAR 16.306(c)(2) shall be signed by the contracting officer.

SUBPART 16.5 - INDEFINITE-DELIVERY CONTRACTS

16.501-2 General.

(c) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met for indefinite-delivery contracts providing for issuance of undefinitized delivery orders (UDOs).

(90) IDCs that enable decentralized ordering shall contain provisions for customers and other users the options of (i) placing orders to be paid using their Governmentwide purchase card and (ii) ordering against their purchase card, for individual orders not to exceed \$100,000. An exception is authorized only to the extent the prospective contractor refuses to accept the purchase card for ordering and payment. Customers and other users of the Governmentwide purchase card against IDCs issued by contracting offices of DLA and other agencies are bound by any applicable restrictions and policies issued by or in accordance with procedures applicable to the individual users (DLA users are governed by DLAD 4105.3 & DLAI 4105.3, DLA Governmentwide Commercial Purchase Card Program).

(d) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangements under Part 16, including firm fixed price, fixed price with economic price adjustment, fixed price with prospective redetermination, or price based on catalog or market prices. When prices are based on catalog or market prices, the price to be paid may be determined by establishing an adjustment factor and applying it to the price in industry-wide pricing guides or manufacturers' price catalogs. Normally, the adjustment factor will be a fixed percentage discount to be applied to the price in effect on the date of each order.

16.503 Requirements Contracts.

(d) The determination that award of multiple contracts is not practicable shall be contained in the acquisition plan or otherwise documented in writing prior to issuance of the solicitation.

16.504 Indefinite-quantity contracts.

(a) The Government's quantity limitations may be stated in different ways; for example, as a number of items or a dollar value worth of items. Stating the Government's minimum/maximum liability for the entire contract is appropriate for multiple line item contracts when, due to the unique nature of the requirement, it is difficult or impossible to predict, prior to solicitation, the number of individual items needed. The contracting officer must balance the risks inherent in providing more specific limitations with the increased risk to the contractor, and possible increased cost to the Government, of providing less specific limitations.

(4)(iv) Consideration of past performance in order placement decisions shall include success in implementation of proposed socioeconomic support programs (see 15.605(b)(1)(91) and performance in carrying out Mentoring Business Agreement **proposals** (see 19.90) **and 15.605(b)(92), and support of Javits-Wagner-O'Day Act (JWOD) qualified**

entities (see 15.605(b)(1)(94)). Solicitations shall so state in the explanation of order placement criteria (FAR 16.504(a)(4)(iv)).

(c) The determination not to make multiple awards shall be contained in the acquisition plan or otherwise documented in writing in the contract file.

16.505 Ordering.

(a)(90) A delivery order must be issued for any quantity ordered, including a quantity ordered concurrent with award of a basic contract.

(a)(5) DLA Form 1224, Shipping Instruction, may be used to issue automated orders under indefinite-delivery contracts not exceeding the simplified acquisition threshold.

(b) Solicitations shall advise offerors that (1) the competition requirements of FAR Part 6 do not apply to placement of individual task and delivery orders; (2) individual orders shall be placed in accordance with the selection criteria specified in the solicitation/contract; and (3) complaints about the placement of individual orders shall be reviewed by the activity competition advocate.

(2) The determination not to provide all awardees a fair opportunity to be considered for a particular order in excess of \$2,500 should be documented in the order file.

(4) The competition advocate at each contracting activity/office (as defined in DLAD 2.101) shall act as the activity task and delivery order contract ombudsman pursuant to FAR 16.505(b)(4). The ombudsman shall attempt to resolve contractor complaints relative to placement of individual task and delivery orders at the local level. Complaints which cannot be so resolved shall be forwarded to the HQ through **DLSC**-POA for resolution by the DLA competition advocate. Each activity is responsible for developing procedures for executing the duties and responsibilities of its local ombudsman.

SUBPART 16.6 - TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.601 Time and materials contracts.

(c) Limitations.

(90) "Not to exceed" price ceilings shall be included in each option and delivery order.

16.603 Letter contracts.

16.603-3 Limitations.

The determination required by FAR 16.603-3 shall be included with the DFARS 217.7404-1 authorization request.

16.603-90 Procedures.

(a)(2) Requests for HQ DLA preaward review and approval of a letter contract or other undefinitized contract action (UCA) shall be made by the chief of the contracting office. Requests subject to 1.690-6(g) may be transmitted electronically to **DLSC**-PPB.

(b) At a minimum, requests for approval shall include:

(1) A written Statement of Urgency supporting the requirement for a UCA, including:

(i) The quantities, dates and priorities of existing and projected requirements to be filled by the buy;

(ii) The date that the requirement was first known to exist;

(iii) Why the interests of national defense demand that a contractor be given a binding commitment so that work can begin immediately;

(iv) Why negotiation of a definitive contract or priced order did not and cannot occur in sufficient time to meet the acquisition need; and

(v) The determination required by FAR 16.603-3 (letter contracts only) and authorization to take the necessary actions for entering into an UCA required by DFARS 217.7404-1;

(2) The contracting officer's responsibility determination of the prospective contractor (FAR 9.103);

(3) The ceiling total price and ceiling unit price(s) to be included in DFARS Clause 252.217-7027 Contract Definitization, an explanation of how they were derived, and documentation of the reasonableness of each ceiling unit price (see 16.703(d)(90) or 17.7603-3(a), as applicable), to include identification of the lowest unit price for each item within the most recent 12-month period.

(4) The obligated amount, interim billing price, and the predefinitization limits of the Government's liability under the UCA;

(5) A discussion of any requirement for progress payments, provisional payments, and options for increased quantity or performance period;

(6) The proposed definitization schedule including dates for--

- (i) Receipt of the contractor's proposal;
- (ii) Beginning of negotiations;
- (iii) Completion of negotiations;
- (iv) Target date for definitization; and

(7) The following additional milestone dates (unless another contract management activity will definitize):

- (i) Receipt of field pricing report;
- (ii) Receipt of the local price or cost/price analysis; and
- (iii) Submission of the proposed definitive contract and supporting file for HQ DLA review and approval, pursuant to 1.690-6(c)(6).

(8) The delivery schedule.

(c) A copy of the signed letter contract shall be forwarded to HQ DLA, ATTN: **DLSC**-PPB, within 1 week of execution.

SUBPART 16.7 - AGREEMENTS

16.703 Basic ordering agreements.

(c) Limitations.

(90) If a DLA BOA is to permit progress payments, such payments should normally be precluded on orders with a ceiling price below \$1 million and/or having deliveries scheduled to commence in less than 6 months (less than \$100,000 and/or less than 4 months for small business firms). This exclusion may be waived where the contracting officer documents the review and results specified in FAR 32.502-1(d)(1) and approval is granted at a level above the contracting officer.

(1)(ii)(90) The requirements of DFARS 217.7404-1 through 217.7404-4, DFARS 217.7405 through DFARS 217.7406, and DLAD 17.7404-2 through 17.7404-90 shall be included in the terms and conditions of BOAs executed by DLA contracting offices which authorize issuance of undefinitized delivery orders (UDOs), for applicability to such UDOs.

(d) Orders.

(90) The file shall be documented when the price or cost analysis techniques discussed at 15.404-1(b) and -1(c) are used for award of priced delivery orders and definitization of UDOs.

(2)(ii)(90) If a DLA BOA contains a progress payment clause without an exclusion provision for orders with a ceiling price below \$1 million (\$100,000 for small business firms) and/or having deliveries scheduled to commence in less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all delivery orders below these thresholds except where the contracting officer documents that the requirements of 16.703(c)(90) and/or FAR 32.502-1 have been met.

(3)(90) The requirements of DFARS Subpart 217.74 and DLAD 17.74 shall be met on all UDOs issued by DLA contracting offices.

(3)(91) The requirements of 16.603-90(a)(2) through (90)(c) shall be followed when HQ DLA preaward review and approval to award a UDO is required by 1.690-6(g).

PART 17

SPECIAL CONTRACTING METHODS

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SUBPART 17.1 - MULTIYEAR CONTRACTING

17.103-1 General.

(b)(iii) The responsibility for making the determination required by DFARS 217.103-1(b)(iii) is delegated to the Commander, DRMS, with power of redelegation to the Director, Directorate of Contracting (DRMS-P), for contractual actions not exceeding \$10 million in total procurement value and for which the cancellation ceiling does not exceed \$500,000. The delegation is unlimited for multiyear determinations when a cancellation ceiling of \$0 is included.

17.104 General.

(b) The authority to approve modification of cancellation provisions pursuant to FAR 17.104(b) is delegated to heads of contracting activities (HCAs). HCAs may further delegate this authority, without power of redelegation, to the Center Senior Procurement Official at each of the Inventory Control Points. Contracting offices not designated as contracting activities (see DLAD 2.101) shall forward requests for modification of cancellation provisions to the Executive Director, Procurement Management (DLSC-P) for approval.

17.105-1 Uses.

(b) The authority to enter into a multiyear contract for supplies pursuant to FAR 17.105-1(b) is delegated to heads of contracting activities (HCAs). HCAs may further delegate this authority, without power of redelegation, to the Center Senior Procurement Official at each of the Inventory Control Points. Contracting offices not designated as contracting activities (see DLAD 2.101) shall forward requests to enter into a multiyear contract for supplies to the Executive Director, Procurement Management (DLSC-P) for approval.

SUBPART 17.2 - OPTIONS

17.202 Use of options.

(90) The requirements of DFARS subpart 217.74 and subpart 17.74 shall be met for surge, emergency, services or other options which are undefinitized at time of exercise by the Government, i.e., an undefinitized option (UO).

17.203 Solicitations.

(a) Highlight the inclusion of an option provision in a solicitation by a cross-reference to the option in the price schedule. The option shall require a positive acknowledgment by the contractor (e.g., annotation of its option price). Under no circumstances shall an option procedure be used which results in inclusion of an option clause in any contract due to failure of the offeror to explicitly signify the unacceptability of the provision or counteroffer a different price for the option.

(b) The requirements of 15.403-4(a)(1) shall be addressed when stating the basis of evaluation.

(d) When a separately priced option quantity or period is permitted in a solicitation which also includes an economic price adjustment (EPA) or similar repricing provision applicable to the same option quantity or period price(s) for the same item(s) of supply or services, the contracting officer shall preclude potential overpricing, usually by providing for a price buildup in the schedule (see 52.214-9001) from mutually exclusive portions of the (basic and option) price subject to EPA and the firm fixed price portions. The firm fixed price portion of the option price may exceed the comparable portion of the basic award price (see 52.217-9001). However, "overlap" (i.e., where any portion of the option quantity or period price is also covered by an EPA clause) is permitted only when the contracting officer documents reasons why overpricing will not occur and utilizes a provision which requires offering of prices for the firm fixed price portion of the quantity or period prices which are no higher than that for the basic contract (see also 16.203-3(93)).

(f) Such option price restriction may be used in other exceptional circumstances where fully justified (FAR 17.203(f)) by documentation included in the acquisition plan.

(g) The approval cited in FAR 17.203(g)(2) should also be included in the acquisition plan. The option price restriction shall be conspicuously included in Section M of the solicitation. The cautionary notice (FAR 17.203(g)(1)) shall also be included in Section M.

17.204 Contracts.

(e) The total of the basic and option periods in the case of services, or the total of the basic and option quantities in the case of supplies, may exceed 5 years when approved by the chief of the contracting office, provided no statutory restriction limits the term of the contract.

17.206 Evaluation.

(b)(90) The determination and approval not to evaluate an option estimated to exceed \$500,000 prior to contract award (or definitization, if an undefinitized contract) shall be in the contract file, and shall include (see also 15.403-4(b)(90)) either,

(i) An explanation of the specific exemption that can be applied to avoid the data submission and certification requirements of P.L. 87-653, and identification of the pricing technique(s) available to subsequently determine the option price fair and reasonable without submission of certified cost or pricing data or catalog exemption data; or

(ii) A statement that such option price(s) are identified in the solicitation and contract Schedule as "not to exceed" ceiling price(s) subject to later definitization (see 17.208(a)(90)).

17.207 Exercise of options.

(a) The option clause shall require that the contractor be given adequate notice (see FAR 17.207(a)) of the requirement to perform under the option (as a general rule, at least 14 days prior to the last scheduled delivery date).

(c)(90) In addition to those considerations set forth in the FAR, exercise options only if it is determined that:

(1) There is no **cardinal** change in the requirement; and,

(2) The contractor's performance is satisfactory. A record of demonstrated superior performance may warrant additional consideration under buying best value guidelines. (See 17.207(e)(90).) Satisfactory performance includes successful implementation of any support to socioeconomic programs which was evaluated as part of source selection as well as any Mentoring Business Agreements which were proposed and evaluated during source selection. **For contracts that effected a Shift to Commercial Practices or change in method of customer support, see 42.1103(90).**

(d)(1) A new solicitation should not normally be used as a means to determine reasonableness of option prices. Tests of the reasonableness of the option price should generally be made by one of the methods identified in FAR 17.207(d)(2) or (3). Whenever a contracting officer determines that it is necessary to test the reasonableness of the

option price by use of a formal solicitation, the contract file must contain a memorandum which briefly explains the reasons for the decision.

(2) The following are examples of factors which may be considered in the informal test of the market and evaluation of the option price(s):

(i) The fact that the option price was evaluated for price reasonableness prior to initial award.

(ii) The relationship of the option price to the price for the initial contract quantity.

(iii) The adequacy of competition at time of initial award and the length of time since the award.

(iv) Changes in the general economy that could affect the contractor's costs.

(v) The results of any market research and analysis efforts (see Part 10).

(e)(90) An additional factor to be considered is the desirability of continuing a successful contractual relationship with a vendor that has demonstrated superior quality and delivery performance. Where the market analysis or survey shows that the item may be available at lower cost, this need not preclude the exercise of the option given a history of superior performance by the contractor. Performance criteria, may be used in determining superior performance and evaluating its importance relative to market price considerations and other factors.

(f) Prior to exercising an option, the contracting officer shall consider the factors at FAR 9.104-1 particularly the contractor's performance under the base contract period and any previous options. A decision not to exercise the option after considering responsibility-type factors is not a determination of contractor responsibility, and is not subject to referral to the SBA if the contractor is a small business.

17.208 Solicitation provisions and contract clauses.

(a)(90) If the contract includes an option in amount exceeding \$500,000 which was not evaluated prior to award, the contracting officer shall include a clause substantially the same as the clause at DFARS 252.217-7001, Surge Option, providing for definitization of the option before option exercise, except in the event urgency dictates post-exercise definitization.

SUBPART 17.73 - IDENTIFICATION OF SOURCES OF SUPPLY

17.7301 Policy.

In the interest of maintaining supply system and item integrity, and fostering the spare parts breakout programs, it is essential to know what is being purchased and from whom. It is the policy of DLA to retain the right to require identification of the manufacturing sources of the items purchased. Therefore, refusal of offerors to provide such information when specifically required is a valid basis for rejection of offers.

17.7302 Procedures.

(c) When required, the source of manufacture must be identified. Refusal of offerors to do so precludes a contracting officer from determining the technical acceptability of the item to be supplied. Therefore, the offer cannot be accepted. Additionally, if an offeror furnishes the information but restricts its use on the basis of confidentiality, except as provided in subparagraph (e) below, the contracting officer must advise the offeror that--

(1) It is not DLA policy to make awards with such restrictions or to hold such information in confidence;

(2) In order to be eligible for award, the confidentiality requirements must be removed; and

(3) If such limitation is not removed, the offer may be rejected.

(d) Obvious reasons for not maintaining confidentiality are that it is operationally impractical because the total administrative costs could outweigh savings on the instant purchase. In addition, because of the volume of purchases, it is difficult to guarantee

confidentiality, and DLA could be liable for inadvertent disclosure. Finally, it is contrary to DoD efforts to expand competition.

(e) Notwithstanding subparagraph (d) above, there may be instances when award may be beneficial to the Government whether or not the confidentiality restriction is removed. In these instances, prior to award, the contracting officer shall review the validity of the restriction. For example, if the identified manufacturing source is advertised in trade journals, commercial source listings, or is otherwise known to industry and Government, then holding the identity of the manufacturing source in confidence is not appropriate and shall be challenged. If it is determined that the confidentiality restriction is valid, then that information shall be held in confidence.

(f) Accordingly, a solicitation provision substantially as set forth in 52.217-9003 shall be included in negotiated solicitations, except in solicitations for commercial items. (Note: This provision, when used, may not be used as a modification to the provision at 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.)

(g) It must also be noted that, if there is no provision in the solicitation which requires the offeror to disclose manufacturing/production sources, the offeror may properly conceal those sources in a competitive atmosphere.

SUBPART 17.74 - UNDEFINITIZED CONTRACT ACTIONS

17.7403 Policy.

(a)(90) The contracting officer shall expedite Government and contractor efforts to secure an acceptable price proposal and evaluation pending and following approval to award a UCA. The chief of the contracting office shall monitor usage of UCAs for conformance with regulatory requirements.

17.7404 Limitations.

17.7404-1 Authorization.

The authority in DFARS 217.7404-1(b) to authorize use of a UCA for a non-urgent requirement, exists only where the non-urgently needed quantity should be included and priced coincident to definitization of an urgently required quantity of the item. Authorization to take this action or the actions cited in DFARS 217.7404-1(a) or (c) is delegated, without authority for further delegation, to:

(a) The chief of the contracting office at the DSCs for a UCA to fill a requisition for a backordered or non-stocked quantity requiring heightened management, i.e.:

- (i) a Military Service requisition with Issue Priority Designator (IPD) 01;
- (ii) a Military Service requisition with IPD 02 or 03; and either an Anticipated Not Mission Capable Supply (ANMCS) or Not Mission Capable Supply (NMCS) indicator in the required Delivery Date field (record positions 62-64) beginning with a "9", "N", or "E" or an OSD/JCS project code (record position 57-59) beginning with a "9".
- (iii) a Foreign Military Sale requisition under the Cooperative Logistics Program Support Agreement (CLSSA) with IPD 02 or 03 and an OSD/JCS project code beginning with a "9".

For such high priority UCAs where the not-to-exceed ceiling price does not exceed the simplified acquisition threshold, this authorization is delegable, but not lower than one level above the contracting officer.

(b) The Administrator/Deputy Administrators, Defense National Stockpile Center and **Director**, Defense Automated Printing and Support Center;

(c) The Commanders/Deputy Commanders of other activities.

The written approval shall document the specific urgency which compels use of a UCA, demonstrate that the restrictions of DFARS 217.7403 are met, and identify the consequences of failure to take such action.

17.7404-2 Price ceiling.

(90) The "not to exceed" definitized contract total price ceiling shall be based on a "not to exceed" unit price included in the UCA for each item (each labor rate, for labor hour or time and materials type UCAs) with the stipulation that in no event shall the delivery quantity be decreased to affect or minimize increased costs to the contractor.

17.7404-3 Definitization schedule.

(90) The definitization schedule shall include milestone dates for receipt by the contracting officer of a price proposal that provides the required cost or pricing data, normally within 30 calendar days following award, and for beginning negotiations. **(This requirement is not applicable to unpriced purchased orders (UPO))**

17.7404-4 Limitation on obligations.

(90) To preserve the DFARS flexibility to increase the pre-definitization level following submission of a qualifying proposal (i.e., one which provides the required cost or pricing data and/or other information the contracting officer deems necessary for price definitization), the contracting officer must keep the obligation level below 50 percent of the not-to-exceed UCA ceiling price until receipt of such proposal. **(This requirement is not applicable to UPO's)**

17.7404-6 Allowable profit.

(90) The chief of the contracting office shall assure conformance with the requirements of DFARS 217.7404-6(a) and (b). **(This requirement is not applicable to UPO's)**

17.7404-90 Other requirements .

(a) Payment limitations. To facilitate timely proposal submission and price definitization, contracting officers should establish initial funding available for interim financing and payments (e.g., progress payments, interim delivery payments (DFARS 232.102-70), public vouchers, and DD250s) consistent with the estimated amounts of contractor expenditures as of the dates specified in the definitization schedule for submission of a qualifying proposal and for price definitization. The contracting officer should subsequently relax or tighten such controls and incentives (e.g., by revising interim billing rates, reducing or suspending progress payments (DFARS 232.503-6), etc.) as necessary and appropriate to achieve timely definitization.

(b) Delivery schedule. Specify a firm delivery schedule, otherwise a "not to exceed" schedule reflecting the Government's minimum needs. A tentative schedule permitting the unilateral contract extension of the delivery schedule shall not be used.

(93) The contracting officer shall identify and include with any delegation of an undefinitized delivery order (BOA, IDC, T&M contract, etc) **or other UCA** for definitization by the cognizant ACO, any independent Government estimate ("should cost") that have been performed and found useful for determining price reasonableness, establishing negotiation objectives, and for contract negotiations. The delegation letter should request that the ACO furnish feedback on the utility and effectiveness of the IGE to the Center and to office(s) preparing and furnishing the IGE.

17.7406 Contract clauses.

(a) and (b) These clauses are not applicable to UPOs.

SUBPART 17.75 - ACQUISITION OF REPLENISHMENT PARTS

17.7501 Procurement of parts.

(b)(3) Solicitation Provision.

(i) The provision at 52.217-9002 entitled "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" may be used in negotiated acquisitions of replacement parts, components, and assemblies which are identified only by the manufacturer's name, part number, and a brief description, **except that the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce, shall be used instead, and shall incorporate 52.217-9002 by reference, whenever a solicitation below the simplified acquisition threshold is issued via electronic means. (See 13.104(90).)** The provision may be used for simplified acquisitions as well as large purchases, provided that the full text of the provision shall be made available to offerors. **(When 52.213-9004 is used, its inclusion of**

pertinent fill-in portions of 52.217-9002, and the latter's overall incorporation by reference, shall, along with directions to the offeror on electronic access to, and other availability (including hard copy) of, all applicable guidance, constitute provision in full text.) The contracting officer shall include the standard provision, or one of its alternates when appropriate, in the solicitation, based upon information regarding the availability of data for evaluation provided by technical personnel. The provision should not be used in procurements where technical personnel have specifically advised that for the instant procurement alternate products cannot be evaluated, e.g., restricted source or OEM source controlled items, National Institute for Occupational Safety and Health (NIOSH) items for which necessary testing equipment is not reasonably available, etc.

(b)(4) Evaluation of alternate item offers for spare parts. When the "Conditions for Evaluation and Acceptance of Offers for Part Numbered Items" provision is used, procedures shall be established by each DSC such that they will evaluate alternate offers when the savings projected will meet the savings threshold stated in the provision and there is a reasonable expectation that the alternate offer may be in line for award. When the provision is not used, all alternate offers will be evaluated, unless the solicitation has provided information that only the item cited in the procurement identification description (PID) will be acceptable (e.g., restricted source or OEM source controlled items, NIOSH items for which necessary testing equipment is not reasonably available, etc.). DSC procedures shall also provide for prompt notification by the contracting officer to alternate offerors of interim status (when required) and final status of the alternate offer, i.e., approved, disapproved, returned without evaluation. Several other factors should be considered in making a decision to evaluate items prior to award.

(i) Reserved.

(ii) For any purchase, if the time before proposed award does not permit evaluation, and delay of award would adversely affect the Government, then alternate offers may be considered technically unacceptable for the instant acquisition and award made to the otherwise acceptable offeror. The benefits which may accrue to the Government, if the alternate item were accepted, must be weighed against any adverse effects caused by delaying award. Consideration shall be given to requesting expedited evaluation if the benefits are significant.

(iii) The contracting officer may forward alternate offers for technical evaluation that are not in line for award or offers that do not meet the savings threshold if other factors indicate that an evaluation should be performed. While savings may not be evident without further consideration, benefits should not be weighed only against the instant acquisition. Future benefits should be considered as well; for example, projected future savings on high demand items, breaking a chronic sole source situation, etc. The other factors must be cited on the request for evaluation that is forwarded to technical personnel. If a preaward evaluation cannot be performed for offers that meet these criteria, a postaward evaluation will be performed. Offers that do not meet the above factors will be returned to the offeror without evaluation.

(iv) When a potential contractor submits an alternate item for evaluation for which there is no active procurement request, the activity Competition Advocate will determine if the alternate item meets the criteria for evaluation listed for alternate offers in DLAD 17.7501(b)(4)(iii) above. The activity Competition Advocate will provide the status to parties submitting alternate items, and will forward qualifying alternate items to the appropriate technical personnel with the reasons the alternate items should be evaluated. These alternate item evaluations will be tracked according to the time frames set forth in DFARS Appendix E.

(v) When a postaward evaluation is performed, the alternate item offeror will be advised of the evaluation results. The Competition Advocate will maintain a tracking system for postaward evaluations, in order to insure followup with contractors. Technical personnel will perform a postaward evaluation within 45 days of receiving the alternate offer, unless unusual circumstances require a longer evaluation period. After the 45 days have elapsed, followups will be generated by the Competition Advocate every 15 days. If the evaluation must be performed by an Engineering Support Activity, the time allowed for evaluation is 90 days with followups generated every 30 days (after the first 90 days) by the activity Competition Advocate.

(vi) If it is determined that award will be delayed pending an alternate item evaluation, such evaluation request will be forwarded to the appropriate functional element and an estimate made of the time required for evaluation. Upon expiration of the estimated time, inquiry shall be made regarding the status of the evaluation. If the

evaluation has not been completed or it is not otherwise imminent, determinations shall be made as to how much longer the evaluation will take and how much longer the award can be delayed. A new suspense shall be established based thereon, or award shall be made immediately if it is not in the Government's interest to further delay the award. Technical personnel are responsible for communication with all parties involved. The decision to hold or proceed with award should not be made until such communication is established and the status of the evaluation has been assessed as accurately as possible. Under simplified acquisition procedures, awards normally should not be held for protracted periods of time unless there are substantial benefits.

(vii) To aid in prioritizing workload, the amount of potential savings or other benefits should be included on any referrals to technical personnel together with any other pertinent factors which would influence the evaluation process.

17.7504 Limitations on price increases.

(a)(2) The thresholds for base price comparison check procedures under SAMMS simplified purchase procedures and local automated procedures shall not exceed 25 percent and \$250, after adjustments specified in DFARS 217.7504(a)(1).

(b) The requirement for review and certification to be accomplished before the purchase applies after awards under simplified purchase procedures where the price is not known until after acceptance of the Government's offer. Further, the certification to the HCA is required as a notification to management, not an approval requirement, of substantial price increases. The method and frequency of periodic notification and the degree and level of management involvement may vary, depending on such factors as dollar value, nature of the procurement, and extent of competition; however, regardless of the approach taken (e.g., quarterly oral or written brief using a table comparing the numbers of certified buys by percentage ranges of price increase within award value ranges, with the results of prior periods), HCA awareness is required of significant price increases on a continuing basis. A local focal point (the price analysis branch/element, where one exists) shall compile and provide local management and **DLSC-PPP**, at least annually, with information on such usage based on a copy of each certification furnished by contracting officers.

SUBPART 17.76 - CONTRACTS WITH PROVISIONING REQUIREMENTS

17.7602 Contracting requirements.

17.7602-2 Issuance of provisioned item orders (PIOs).

(90) Reserved.

(91) The file shall be documented when the price or cost analysis techniques discussed at 13.106(c)(90)(ii) and (v) are used for award of priced PIOs and definitization of undefinitized provisioned item orders (UPIOs).

(92) If the contract contains a progress payment clause without an exclusion provision for orders with a ceiling price below \$1 million (\$100,000 for small business firms) and/or having a delivery schedule of less than 6 months (4 months for small business firms), a provision precluding such applicability shall be included in all PIOs below these thresholds.

(93) Reserved.

(94) Reserved.

(c) The requirements of DFARS 217.74 and subpart 17.74 shall be met for all UPIOs awarded by DLA contracting offices.

17.7603-3 Negotiating and executing supplemental agreements.

(c)(90) The file shall be documented when the price or cost analysis techniques discussed at 13.106(c)(90)(ii) and (v) are used for the exercise of priced PIOs and definitization of UPIOs.

17.7690 Contracting officer's representative - Provisioning.

Technical personnel at each DSC and additional personnel within that office shall be designated as Contracting Officer's Representative for Provisioning for the purpose of

providing technical assistance to offerors/contractors with regard to requirements for equipment support and provisioning for DSC acquired end items/components. Delegation of responsibility shall include authority for actions to be taken by the Provisioning Coordination Office as set forth in DLAD 4100.8, Surveillance of the Contractual Aspects of the Provisioning Cycle in the Defense Supply Centers. For example, the COR for Provisioning is responsible for reviewing purchase request (PR)/MIPR provisioning requirements to ensure compliance with provisioning policy and procedures and proper presentation of provisioning requirements in solicitations and contracts, conducting Pre-Provisioning Guidance and Source Coding Conferences when required by the contract, negotiating reductions in provisioning technical documentation requirements, including recommendations for equitable adjustments in the contract price or delivery terms based on technical provisioning considerations, surveillance necessary to assure receipt of provisioning technical documentation, and notifying the contractor of required corrections (rejection) or acceptance of provisioning technical documentation. The delegation will not include any authority to modify or change the terms of the contract or to make any agreement which will result in an increase in the contract amount or extend the time for delivery of the end items.

17.7691 Reserved.

17.7692 Data pricing, evaluation, and award.

The clause cited at 52.217-9000, Data Pricing, Evaluation, and Award, shall be inserted in solicitations for acquisition of data with end items. The clause shall be inserted in Section M, Evaluation Factors for Award.

SUBPART 17.90 - MULTISOURCE CONTRACTING

17.9000 Scope of subpart.

This subpart prescribes policies and procedures for acquisitions of supplies and services from multiple sources when the coverage at FAR 16.504 for making multiple awards of indefinite-quantity task and delivery order contracts is not used.

17.9001 Policy and authority.

(a) Provision for making awards to more than one source of supply or service may be made for the following purposes or reasons under the authority described for the respective purpose or reason.

(1) Establishing or maintaining alternative sources. See FAR 6.202.

(2) Industrial mobilization; or engineering, developmental or research capability. See FAR 6.302-3.

(3) Production test. See DLAR 4125.1, Production Testing of DLA Managed Items and FAR 6.101.

(4) Prospective contractor not responsible for entire quantity. See FAR 9.103.

(5) Supply assurance. See FAR 6.101.

(b) Contracting officers shall obtain the advice of local counsel both in acquisition planning and prior to award whenever multisource contracting is proposed on an other than full and open competition basis.

17.9002 Conditions for use.

(a) The conditions for use of multisource contracting for the purposes or reasons described in 17.9001(a)(1) and (a)(2) above are described in FAR 6.202 and 6.302-3, respectively.

(b) Multisource contracting may be used when it is necessary for the purpose of testing under contract, the adequacy and practicability of specifications for a new or modified item to assure that the specification will permit quantity or mass production of quality items within economical production practices, and that the specification does not restrict competition.

(c) When the otherwise low, responsive or technically acceptable offer is from a prospective contractor that cannot be determined to be responsible for the entire quantity on which it offered, award may be made to that offeror only for the portion of

the total requirements for which the offeror can be determined responsible. In such cases, the contracting officer may award the balance of the total requirements or that portion of the balance of the total requirements to the next low, responsive or technically acceptable offeror(s) to the extent that such offeror(s) is determined to be responsible, provided that the terms and conditions of the solicitation do not limit the Government's right to make multiple awards and the prospective contractor(s) does not condition its offer to preclude such awards. (Note that when the provision at FAR 52.214-10, Contract Award - Sealed Bidding, is included in IFBs, as required by FAR 14.201-6(e)(2), the Government has the right to award less than the total quantity solicited. Bids that take exception to this provision are not responsive. When the provision at FAR 52.215-16, Contract Award, is included in RFPs, as required by FAR 15.407(d)(4), the Government has the right to award less than the total quantity solicited. Offers that take exception to this provision are not technically acceptable.)

(d) Provision for making multiple awards may be made to ensure the availability of supplies in business risk situations. A reasonable basis for making multiple awards in such situations must exist, for example, the record shows a history of poor performance (unrelated to Government caused delay) for a critical item due to a contractors' or inadequate production capacity; or the specification is complex or difficult and requirements must be satisfied in a relatively constrained timeframe. To adequately justify making multiple awards in such cases, the contracting officer must demonstrate that awarding less than the total requirements to more than one source will aid in ensuring that the prior contractor performance problems will not recur. Further, the benefits of having more than one source under contract for the same supplies or services at the same time should outweigh any anticipated increased prices that result from the award of more than one contract.

17.9003 Limitations on use.

(a) When provision for multiple awards is made for the purpose of production testing a specification:

(1) The Government's minimum need must be principally for the purpose of determining that an item of supply can be manufactured to the specification on a production basis. Obtaining delivery of supplies is a secondary purpose.

(2) The quantity to be awarded to any contractor should, normally, be limited to the minimum economic production quantity required to ensure an adequate production test.

(b) When multiple awards are made due to the fact that the low, responsive or technically acceptable offeror cannot be determined to be responsible for the entire quantity solicited, the responsibility determination made on such offeror must reasonably describe the rationale for determining that award of more than the proposed award quantity to such prospective contractor would be beyond that prospective contractor's production or service capacity.

(c) When provision for multiple awards is made to ensure the availability of supplies in business risk situations:

(1) The contracting officer must adequately document a reasonable basis for making multiple awards that: supports the Government's need to make multiple awards to obtain the requirements when needed; explains how awarding more than one contract will reduce or eliminate past performance or supply availability problems; and describes the benefits of obtaining more than one source that outweigh any anticipated increases in prices resulting from the award of more than one contract (see 17.9002(d) above).

(2) The solicitation must permit award of the entire requirement to one offeror.

(3) The solicitation should include a provision reserving the Government's right to make multiple awards to other than the lowest priced offerors.

(4) Sealed bidding cannot properly be used because the solicitation provides that award may not be made solely on the basis of lowest price.

(5) The contracting officer must document, after receipt of offers and prior to award, that a reasonable basis to award to multiple sources exists.

(6) The contracting officer should make provision for a degree of competition, when practicable (e.g., low offeror will be awarded 60 percent of the total requirement, whereas the second low offeror will be awarded 40 percent of the total requirement).

SUBPART 17.91 USE OF PUBLIC MANUFACTURERS

17.9100 Scope of subpart.

This subpart prescribes policies and procedures for the solicitation of offers from, and the subsequent issuance of project orders to, public manufacturers. This subpart does not address procedures for conducting public-private competition. Department of Defense Instruction 7220.1, Regulations Governing the Use of Project Orders, provides the primary guidance for the issuing and acceptance of project orders. This subpart provides additional guidance.

17.9101 Definitions.

"Basic Project Order Agreement (BPOA)" is an agreement between a Defense Supply Center and a public manufacturer that establishes the basic terms and agreements for any subsequent project orders placed against that BPOA, whether issued by the same Center, or another Defense Supply Center. The BPOA, in itself, is not a project order.

"Project Order" is a specific, definite, and certain order issued under the authority of 41 U.S.C. 23 for the manufacture of materials, supplies and equipment, or for other work or services which, when placed with and accepted by a separately managed and financed Government-owned and operated establishment, serves to obligate appropriations.

"Project Order Officer" is the contracting officer who issues a project order on behalf of a Defense Supply Center. The project order officer is responsible for ensuring that all appropriate procedures are adhered to, both in the determination to solicit a public manufacturer, and in any subsequent solicitation, project order issuance, and "post-award" administration.

"Public Manufacturer" is a Government-owned, Government-operated establishment, including, but not limited to, arsenals, shipyards, manufacturing or processing plants or shops, overhaul or maintenance shops, research and development labs, ordnance plants, or testing facilities.

"Public Sector Bidders List (PSBL)" is a bidders list consisting of the names and CAGE codes of public manufacturers available for use by the Agency, the Federal Supply Classes they are capable of supporting, and identification of part numbers/National Stock Numbers of items previously manufactured.

"Rough Order of Magnitude (ROM) Estimate" is an informal request for approximate cost, price and availability information from a public manufacturer. The ROM estimate is used to determine whether the public manufacturer can meet agency requirements for an item, without burdening the public manufacturer with the cost of preparing a detailed response.

17.9102 General policy.

(a) The Defense Logistics Agency relies on the private sector as the primary source of supply for required material and services. However, public manufacturers will be solicited at the first indication that the private sector cannot meet Agency requirements, or where using the public sector meets the intent of laws providing direct access (e.g., Army Arsenal Act (10 U.S.C. § 4532)).

(b) Contracting offices shall use similar business systems and practices for public and private sectors. Contracting personnel are responsible for issuing the Rough Order of Magnitude (ROM) Estimate request, Request for Quote (SF-18) and Project Order (DLA Form 531); entering the project order into the DLA Contract Action Reporting System (DCARS); and performing post award functions. Supply, Technical, and Quality functional activities will be the same as used for private sector acquisitions to the maximum extent possible.

(c) Contracting officers shall ensure that no more or less stringent quality assurance requirements are imposed upon public manufacturers than are imposed upon private sector sources. The nature of the item required should dictate the quality assurance requirements. For example, if a certificate of conformance or MIL-Q-9858A was required from the private sector manufacturer for an item (or for an equivalent item in the case of a first time Agency acquisition), the same will be required from the public manufacturer. Similarly, if DCMC were being tasked to perform source inspection at a private manufacturer's plant, it will provide the same service at the public manufacturing facility.

17.9103 Conditions for use.

Public manufacturer(s) should be solicited when:

(a) No responsive/technically acceptable offers from a responsible private sector source are received in response to a solicitation. The determination that the offer is unacceptable requires contracting officer consideration of several factors, including the urgency of need, the potential that an acceptable agreement could be obtained through negotiations, and the possibility of breaking out non-urgent quantities for a private sector award. A private sector response may be considered unacceptable if any of the following unresolvable conditions exist:

(1) The offeror does not propose to meet the required delivery date (RDD). The need date, not the lead time of record, should be used to calculate the RDD (solicitations should not have delivery schedules stated in terms of "after receipt of order" (ARO) if the buy is for a non-stocked item filling a customer requisition or other forecast demands do not exceed available stock or "due in" may be issued with the delivery date stated in terms of ARO to facilitate maximum private sector delivery schedule latitude.

(2) The proposed price is considered unreasonable. Caution must be exercised to ensure that a project order is not subsequently issued at a price exceeding the price found unreasonable in the private sector. However, the contracting officer may determine that it is in the government's best interest to issue a project order under these circumstances if: (a) the public manufacturer's price includes one-time startup costs, (b) there is a recurring demand for the item, and (c) subsequent prices for the item are anticipated to be lower than the unreasonable private sector price. Such determination must be in writing and approved by the head of the contracting activity.

(b) If an item has never been acquired from the private sector as a result of being designated for public manufacture under the authority of the Army Arsenal Act (10 U.S.C. § 4532) or similar Military Department authorities, the contracting officer may continue to rely exclusively on a public manufacturer as the source of supply. This situation will exist for a large number of items to be acquired as Numerical Stock Objective (NSO) or "insurance" items.

17.9104 Limitations on use.

Project orders may be issued to public manufacturers for the purpose of satisfying Agency requirements only to the extent that the public manufacturer already has the capability to perform the work. DoDI 7220.1 states that the activity receiving the project order "must be substantially in a position to manufacture" the item. For example, if a certain public manufacturer had no machining capability, a project order could not be issued which would require it to develop or acquire such a capability. The contracting officer should review DoDI 7220.1 to ensure that other applicable restrictions are met.

17.9105 Solicitation procedures.

When an applicable condition of paragraph 17.9103 is satisfied, the following procedures shall be used in soliciting public manufacturers:

(a) SF-18, Request for Quote, shall be used to solicit public manufacturers.

(b) A Rough Order of Magnitude (ROM) estimate should be requested, rather than a firm proposal, when the public sector estimate is required only to assist in the acquisition decision making process. For example, in cases where no procurement or cost history exists, and the manufacturing task appears complex, a ROM may be requested to gain a rough estimate of cost and delivery schedule. Item managers may defer acquisition for some items if cost estimates are excessive in relation to demand or criticality. The public sector bidder should be informed as to the potential use of the ROM. Public sources should not be solicited for a firm proposal unless there is a high probability that a project order will be issued. Proposal preparation is costly, and superfluous requests for firm proposals may result in a reduction of offers from public manufacturers. Following review of the ROM estimate, if it is determined that the public manufacturer is likely to be capable of meeting Agency needs, a Request for Quote (SF-18) should be issued to obtain a firm proposal.

(c) Public manufacturers may be solicited concurrently with private sources if there is reason to believe that acceptable offers will not be submitted by the private sector. The purpose of concurrent solicitation is to reduce lead time, it is not a public-private competition. Either a Request for Quotations or a ROM estimate may be requested from the

public manufacturer, depending on the likelihood of issuing a project order. The public manufacturer must be made aware of the fact that the private sector is being solicited concurrently, and that the private sector will receive the award if an acceptable offer is received (see 17.9103).

(d) All public manufacturers that have indicated an interest in the Federal Supply Class as shown in the Public Sector Bidders List (PSBL) should be solicited, except in the following circumstances:

(1) When, as shown in the PSBL, a public sector manufacturer has made the exact item in the past, solicitation may be limited to this manufacturer.

(2) When an acquisition is being made for an item designated solely for public manufacture (see 17.9103(b)), only public manufacturers from the "requiring Service" shall be solicited. For example, Navy shipyards or depots shall not be solicited for the manufacture of an item with an Army system application designated for public manufacture pursuant to the Army Arsenal Act (10 U.S.C. § 4532), regardless of their capability to manufacture the item.

(e) After an item has been acquired from the public sector for the reasons delineated in 17.9103(a), or if previous solicitations of the private sector have been unsuccessful, there is no requirement to resolicit the private sector prior to soliciting public manufacturers for subsequent requirements. A Commerce Business Daily notice (see FAR 15.404 and 5.205(c)) shall be published annually to solicit private sources interested in furnishing items that have been supplied by public manufacturers. The contracting officer shall ensure that viable potential sources identified through the CBD notice are solicited for future requirements. In addition to the CBD, the publication of notices in trade publications, industry journals, etc., is encouraged as a method of locating potential sources.

17.9106 Evaluation of Public Manufacturer Offers.

Public manufacturer offers shall be evaluated for project order issuance in the same manner as private sector offers.

17.9107 Assignment of project orders.

DoDI 7220.1, Regulations Governing the Use of Project Orders, provides the primary guidance for the issuance and acceptance of project orders. The following is provided as implementing guidance for issuing Agency project orders to public manufacturers:

(a) Project orders will be issued on DLA Form 531. The contracting officer shall execute block 9c, Project Order Officer signature block.

(b) The establishment of a Basic Project Order Agreement (BPOA) is the preferred method for establishing the common terms and conditions for project orders issued by DLA contracting offices to public manufacturers. *DLSC*-PRT shall designate lead Supply Centers to execute BPOAs with designated public manufacturers. Following the execution of a BPOA, the lead Supply Center shall provide a copy of the BPOA to all other DLA Supply Centers. This BPOA shall be used by all DLA Supply Centers. To the greatest extent possible, Centers should refrain from deviating from the content of the model BPOA, promulgated by the 29 November 1993 AQP policy letter entitled "Model Basic Project Order Agreement (BPOA)", in securing a final BPOA with public manufacturers. In order to standardize business relationships and procedures, all BPOAs should share a common baseline. Rather than negotiating a widely disparate number of BPOAs, Centers should emphasize to public manufacturers the flexibility and tailoring that can be incorporated into individual project orders.

(c) Procurement Instrument Identification Numbers (PIIN). PIINs shall be assigned to BPOAs and project orders under BPOAs as follows:

(1) BPOA: Center FCIM DODAAC + FY + "G" + four digit serial number. Example - "SP0499-94-G-0001" (DSCR).

(2) Project orders issued under a Center's own BPOAs: PIIN of appropriate BPOA + four digit serial number. Example - "SP0599-94-G-0001-0001" (DSCP project order under a DSCP BPOA).

(3) Project orders issued under another Center's BPOAs: PIIN of appropriate BPOA + two character Center prefix from DFARS Appendix G + two digit serial number. Example -

"SP0799-94-G-0004-TW01" (**DSCP** issuing a project order under 17.9108 Administration of project orders.

(a) Defense Contract Management Command (DCMC) support. In the event that a project order requires DCMC to provide quality assurance, a copy of the project order shall be provided to the applicable Defense Contract Management Command (DCMC) Office at the time of issuance.

(b) Use of data in project orders.

(1) In cases where the Government has obtained unlimited rights to data, it may be used without restriction to manufacture the item.

(2) In those cases where Government rights are limited/restricted, those limitations/ restrictions must be reviewed to determine whether production of the item by public manufacturers to meet Agency requirements is permitted. When appropriate, contracting officers should aggressively pursue the right to use the data by asking for permission to use the limited/restricted rights data either free of charge or for a reasonable fee.

(3) In some cases, the Government may need to use certain kinds of proprietary data for which it does not have rights in order to meet mission requirements. Depending on the data and the circumstances involved, this may be done, although it may also result in claims requiring resolution before the U.S. Court of Federal Claims (e.g., 28 U.S.C. § 1498). The potential for a claim and the amount of the claim should be weighed against mission needs before deciding to proceed with the use of such data. Counsel should be consulted in all such situations.

(c) Reporting.

(1) Project orders issued to the public sector shall be recorded in the DLA Contract Action Reporting System (DCARS). To report these actions on the DD Form 350, code the form the same way contract award DD Form 350s are coded, except assign code "4" to Block B7, Type Obligation.

(2) Public manufacturers' quality, cost and schedule performance shall be tracked using the same Automated Best Value System (ABVS) system used to track private sector companies. This information shall be used when evaluating public manufacturers for project orders.

SUBPART 17.92 - REOPENER CLAUSES

17.9201 General.

(a) A reopener clause is a special contract provision which creates a right for an equitable adjustment in the contract price at a specified time or due to the occurrence or non-occurrence of an event or contingency of the type specified in FAR/DLAD 31.205-7(c)(2).

(b) A reopener clause provides a means of achieving an equitable resolution of the treatment of a significant contingent cost during both the initial pricing of a contract as well as at any time an equitable adjustment to such price is called for under the provisions of the clause. However, its use requires deliberate care to avoid a shift in risk from the contractor to the Government. Consequently, it should be used only in extraordinary circumstances involving high dollar value procurements (i.e., rarely less than \$500,000) where the uncertainty associated with particular cost element(s) substantially impacts the contract price.

(c) Circumstances in which its use may be appropriate include, but are not limited to, the following:

(1) The price reasonableness of one or more subcontracts representing a substantial portion of the prime contractor's proposed price cannot be determined prior to award of the prime contract for such reasons as:

(i) The prime contractor's inability to obtain subcontractor cost or pricing data timely

(ii) An adequate cost/price analysis was not performed by the prime contractor;
or,

(iii) Adequate field report(s) were not received prior to conclusion of negotiations.

(2) A Forward Pricing Rate Agreement (FPRA) or Recommendation (FPRR) is not achievable because of uncertainties having a significant impact such as:

- (i) Supporting contractor budgetary data was not submitted;
- (ii) A substantial portion of the business base has not yet materialized; or,
- (iii) A potential for purchase, merger, or sale of part of a contractor's operations exists.

(3) The price impact of a change in a contract requirement, term, or condition made during negotiations is significant but cannot be reasonably quantified and resolved prior to award.

(4) The offeror's estimating system contains significant deficiencies (DFARS 215.811-70(g)(2)(vi) and (3)).

17.9202 Procedures.

When the contracting officer documents that use of a reopener clause is the most appropriate means of overcoming a contingency (see 31.205-7(c)(2)(90)(v)) that will significantly affect the pricing of a contract, as a minimum, the following should be accomplished:

(a) Request the field ACO provide a recommended clause for those cases in which the DCMC recommended its use. In other instances, contact the local cost/price analyst and the field ACO, as appropriate, for assistance in developing and/or modifying a reopener clause;

(b) Query the field ACO, regarding **(1) the adequacy of the contractor's accounting system to provide all necessary cost data in the form required to price the adjustment (obtain a review of the adequacy of the accounting system if necessary), and (2) the adequacy of the contractor's estimating system and whether any estimating system deficiencies have been identified, and if so, whether a reopener clause or other technique is recommended (DFARS 215.407-5-70(g)).**

(c) Obtain, as necessary, cost or pricing data applicable to the cost element(s) and markup factors, to establish the base level in the clause from which adjustment will be made, and ensure such data has been verified;

(d) When the weighted guidelines method is used, the profit objective otherwise developed should reduce the value for contract type risk (DFARS 215.404-71-3(d)(4)(iii)); and the values for management and/or for cost control under the performance risk factor, when use of **a reopener** clause is **needed** due to an inadequate analysis of the subcontractor's proposal by the prime contractor (DFARS 215.404-71-2(e)(3)(i)(E)) and/or **when there are estimating system deficiencies, cost proposal inadequacies and/or ineffective cost/schedule control (DFARS 215.404-71-2(f)(3)), respectively;**

(e) Prepare a proposed schedule of calculations for each affected CLIN which identifies each specific rate, factor, element of cost, profit, etc., to be covered by the reopener clause; and explicitly describes or provides an example of the precise methodology to be used to calculate any resulting price adjustment. Consider whether it is appropriate to retroactively apply a price, as subsequently finalized, to items already delivered on time and to late deliveries.

(f) Obtain legal review for sufficiency and consistency with other contract clauses;

(g) If the clause is to provide for an upward adjustment, notify the local budget office of the necessity to commit funds over and above the contract price to the amount of the ceiling established, or obtain a confirmation from the requiring activity that funds are available and have been set aside) to cover the potential increased obligation (in the event the award is funded by a Military Inter-departmental Purchase Request);

(h) If use of a locally developed clause or one of the clauses at 17.9205 is contemplated on a modified basis, provide an advisory copy of the draft reopener clause,

after completing steps (a) through (g) above, to the local contract policy office for review.

(i) If the modifications to one of the clauses at 17.9205 exceed minor changes, **i.e., would** substantially alter or eliminate any of the provisions of the clause, or if a local clause is used, promptly provide a facsimile copy of the draft clause to Headquarters DLA, **DLSC**-PPP.

(j) Incorporate the amounts and methodology reached through preaward discussions/negotiations with the contractor, in a document executed by both parties which is made an attachment to the price negotiation memorandum (PNM). Absent such agreement, calculations supporting the contracting officer's interpretation of negotiations should be incorporated in the PNM. (NOTE: Because such information may be considered confidential by the contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract.); and

(k) Indicate in any letter of delegation for contract administration that the award contains a reopener clause. Advise the field ACO of any awards retained for local administration which will be affected by a prospective FPRA/FPRR, to assure the required information will be furnished timely.

17.9203 Contract requirements.

Incorporate the cost principles and procedures in FAR Subpart 31, for use as the basis for pricing any adjustment under the reopener clause, and the clauses at FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data - Modifications, FAR 52.215-25, Subcontractor Cost or Pricing Data - Modifications, (if applicable), and FAR 52.215-2, Audit - Negotiation.

17.9204 Clause requirements.

A reopener clause shall, at a minimum, incorporate the following:

(a) A title clearly designating it as a reopener clause;

(b) A clear statement of purpose;

(c) A clear identification of the items, amounts, event triggering the reopener procedure, and the responsibilities and rights of the contractor and the Government, including the requirement for certified cost or pricing data, and applicability of the Disputes clause (except for the circumstances in 17.9204(d)(iii)), as specified in DFARS 215.407-5-70(g)(3)(i)-(iv);

(d) A clear statement of the methodology for pricing any adjustment, in the following order of preference:

(i) A preestablished pricing formula which precludes the need for further negotiations;

(ii) If the nature of the contingency is such that its price impact can only be anticipated to fall within a broad range of prices vice one or several alternative price outcomes, the clause may identify the range and specify that the amount for that cost element may be revised within such range through negotiations. A pricing formula or methodology would be used to apply appropriate markup factors from the original contract price negotiation;

(iii) If the nature of the contingency is such that its price impact cannot be anticipated to fall within a broad range and/or original price negotiations did not involve cost or pricing data, the clause may instead specify that the parties will enter into good faith negotiations under the clause and may include a "walk-away" option terminating performance a specified number of days following receipt of written notice by either party in the event of a failure to agree.

(e) To minimize excessive obligation of funds and the potential for substantial over or under-payment, if there is reason to believe one co others, then the amount corresponding to the most likely contingency should normally be incorporated as the value of the interim cost element when establishing the contract price. If all alternatives are of equal likelihood, then a value based on a "best estimate" should normally be used. It may also be appropriate to provide for a price adjustment whenever information indicates, prior to the scheduled time established in the clause for an adjustment in the

contract price, that there may be a significant variance from the anticipated finalized price;

(f) A provision for a downward and/or upward adjustment as appropriate (see 17.9104(e)). An exception is authorized only when necessary to achieve final agreement on price. For contracts allowing an upward adjustment above the contract price, establish a firm, not to exceed ceiling, on an aggregate basis (and per unit basis if applicable), above which no price adjustment shall be made;

(g) The method of adjusting any option quantity/period prices, if any, which may result from operation of the clause;

(h) If the contract is not subject to the Cost Accounting Standards (FAR Part 30), the treatment of accounting system changes which impact the price adjustment contemplated by the clause; and

(i) A contractor certification that the award price does not include any amount for the specified contingency except as provided for in the clause.

17.9205 Contract clauses.

The reopener clauses listed below are available for use in negotiated contracts only after an advisory copy has been submitted and reviewed in accordance with 17.9202(h):

(a) Reopener clause - Cost of specified direct materials/other direct cost items (52.217- 9004); and

(b) Reopener clause - Pending indirect rates proposal (52.217-9005).

SUBPART 17.93 READINESS AND SUSTAINABILITY (R&S)

17.9300 Background.

The primary mission of DLA is to support the warfighter in peace and war. Readiness and Sustainability (R&S) are the two most essential components of military preparedness and are critical to the execution of U.S. military strategy. DLA's unique Federal role as a Combat Support Agency makes it directly responsible for the timely supply of battle-critical consumable material to the CINCs and Unified Commands in support of their operational requirements. We must be able to meet our customers' readiness, sustainability, and weapon system acquisition requirements. This requires that we anticipate, plan, and satisfy their needs during peacetime, contingency operations, wartime, or other crises such as operations in support of humanitarian assistance or natural disasters. This is what sets us apart from our competition; consequently, readiness and sustainment planning must be a primary consideration for all of our material management, resource investment, and acquisition strategies.

DLA and the Services are required to maintain the minimum R&S requirements necessary to fight and win two nearly simultaneous Major Regional Conflicts as set forth in the Defense Planning Guidance. Our ability to effectively respond to these requirements must be at the core of everything we do. Traditional strategies to support R&S requirements need to be augmented with business practices and strategic plans. As we continue to downsize, reduce inventory, and employ new business practices, contracting personnel must understand and facilitate the linkage between our national industrial infrastructure and our ability to meet readiness and sustainment needs. There is an intrinsic tie between our ability to reduce our dependence on Government owned inventory through use of commercial business practices that reduce logistic response time and our ability to meet readiness and sustainment goals. As we reduce lead times and optimize our use of industry capabilities and national inventories, we will be better able to respond to out-of-stock and spike in demand situations without disrupting supply support to our customers. In some cases, we will also need to identify programmatic and other intervention actions necessary to meet surge demands for critical items required by the Services and the CINC's/Unified Commands. This concept is in line with our Buy Response Vice Inventory (BRVI) thrusts to utilize industry based solutions to satisfy peacetime requirements and readiness requirements to the maximum extent possible.

Therefore, in our reengineered business practices we must develop surge capability mechanisms that employ commercial business practices for critical war items to respond to unpredictable demand. These strategies must also instill confidence in our customers that the Agency can provide timely and cost effective support, and be responsive during an emergency or wartime situation. Each acquisition plan should describe processes for expanding long-term business arrangements which (1) ensure that they reflect their

customers' identified R&S requirements, and (2) provide for war readiness to be embedded in every new business practice and investment strategy to ensure those requirements are supported to the maximum extent possible. Acquisition plans may also need to address the fact that industrial capabilities to meet readiness and sustainment requirements may need to be augmented by other alternatives such as investment in contractor-managed inventory or traditional depot support.

17.9301 Policy.

Developing surge capability mechanisms that employ commercial business practices for obtaining critical war items ensures that the Agency can provide timely and cost-effective support during an emergency or wartime situation. Each DLA field activity should work with its customers to identify their R&S requirements, provide for war readiness in every new business practice and investment strategy, and establish long-term business arrangements that ensure those requirements are supported.

17.9302 General Procedures for R&S Acquisition Strategies.

The contracting officer, with assistance from the acquisition planning and industrial preparedness staff, is responsible for identifying items with critical applications or surge requirements essential in wartime or emergency. The approach in developing and using R&S strategies should be tailored to the profile of the item, industry, and customer requirements, and consider their combined impact on the current and future R&S posture. In order to maintain responsive customer support to surge requirements, the contracting officer shall consider the following in the acquisition planning, solicitation preparation, and contract negotiation stages of the procurement:

- a. Reviewing all items to determine those which may have critical applications and surge requirements and are considered essential should a wartime situation or other emergency arise.
 - b. Adding appropriate language and evaluation criteria for industrial capability in support of readiness objectives as an evaluation factor in acquisitions covering critical items.
 - c. Reviewing all contracts or orders for warstopper items, including those with sole source and mandatory sources (i.e., UNICOR, NIB, NISH) to ensure capability exists to meet increased mobilization demands.
 - d. Intervention actions that require cost effective programmatic solutions such as investment in contractor maintained rolling inventory and/or production capability.
 - e. Considering specialized contracting concepts, initiatives, and strategies.
- Examples are outlined below:

(1) As the depot system diminishes, we must tailor logistics support to best meet the warfighter's needs. We must take advantage of commercial capabilities and practices and rely more on contractors to maintain and manage certain quantities of essential items. These would include items that would have high wartime "surge" demand that could not be covered under normal commercial business and inventory management practices and would require a "bubble in the pipeline" until industry could increase production quantities. Accordingly, consideration should be given to rolling inventory of raw or semi-finished long lead material, inventory sharing agreements with a contractor's commercial customers, stock rotation contracts if obsolescence is a problem and other forms of Vendor-Managed Inventory (VMI) arrangements. Under the VMI scenario, we can take advantage of the contractor managing limited inventories or sharing national inventories with his commercial customers as a means to meet spikes in demand.

(2) After review of the items discussed in paragraph a. above, we may determine that an essential defense industrial capability is endangered. Accordingly, we may need to take industrial base intervention measures to protect the endangered essential defense capability. This entails determining the relationship between the endangered capability and our need for it (including an assessment of the costs of intervention) and, if appropriate, taking action to prevent losing it. These actions may include the use of directed (c)(3) buys for availability of domestic sources. Another example is the use of an Industrial Base Maintenance Contract (IBMC) which is used to assure the availability of critical defense unique industrial capability and/or processes. This innovative contracting tool achieves two objectives: (1) the manufacturer can maintain the requisite technical expertise and production facilities; and (2) the Government retains the ability to obtain battle critical items on short notice. The contract allows for

quick response in the event of unplanned contingency actions despite downsizing and reduced funding.

(3) When appropriate, prepositioned government furnished equipment (GFE) may be used as a means of augmenting contractor's production capacities in order to meet contingency requirements for critical items. This is appropriate when industry is unable or unwilling to invest in capital equipment due to diminishing peacetime requirements. Provision of GFE should also be considered as a means of disseminating dual-use technology to industries supplying critical items to facilitate their cultivation of commercial business. Storage and Maintenance agreements should also be negotiated to facilitate contractor maintenance of the GFE in their possession.

(4) Continuous market and sector studies of endangered capabilities must be performed to determine if there are any potential domestic, and, if appropriate, foreign sources who can supply comparable items and provide logistical support. The use of dual use technologies, coupled with production sharing business arrangements with a producer's commercial customers, should be explored as an alternative to maintaining defense unique production capabilities. The goal is to keep critical defense production capability with surge capacity at the lowest possible cost and without having to buy high peacetime quantities to maintain an industry.

f. Fostering teamwork and cooperation to assure effective acquisition planning is accomplished and our contracts contain the appropriate terms to assure our R&S posture is sufficient to meet all contingencies. Areas to consider during acquisition planning include the suppliers' ability to transition from commercial to Government work and utilizing Broad Agency Announcements (BAAs) to request technology advancements to enhance our R&S posture. Planning requires cooperation and a commitment that the offices of Contracting and Production (or Acquisition), Material Management, Distribution, Electronic Commerce, and the Commodity Business Unit Chiefs and their personnel will all work together to achieve this goal.

g. Using BAAs as a tool to elicit innovative/creative concepts from the private sector to maintain readiness in a commercial environment.

h. Negotiating third party shared production agreements or shared inventory agreements with manufacturers and producers providing critical items and their commercial customers.

i. Negotiating contractually binding Planned Producer commitments that incorporate the amount of production firms are willing and/or able to allocate during contingency, wartime or other emergency situations. These agreements should be used in conjunction with (c)(3) buys for the purposes of maintaining a critical mobilization base.

j. Investment in "surge" capability may be necessary for critical items with a high wartime to peacetime demand when a contractor is unwilling/unable to maintain needed capacity and/or inventory to meet the wartime requirements. Analysis and a business case for each arrangement will be required clearly showing the benefit of investment in industrial base capability or vendor managed inventory (VMI) in lieu of government held war reserve materiel. More importantly, these actions must be programmed into the industrial preparedness "Warstopper" accounts to support DLA wartime requirements. These actions will require coordination with the industrial support and preparedness personnel and Chiefs of Contracting offices within the Center and at headquarters DLA. Close coordination with appropriate materiel management personnel and Service staffs will also be required. These actions must also be incorporated into the individual ICP business plans clearly laying out the acquisition strategy and business arrangements with yearly costs through the POM cycle. The strategy and approach developed for surge support should be a coordinated and integrated approach to meeting customer wartime "surge" demand.

17.9303 Solicitation Preparation.

The following concepts shall be considered for use in all acquisitions:

(a) Using the offeror's ability to provide R&S/surge requirements as an evaluation factor under best value buying methodology (see DLAD 15.605(b)(2)(90)). In section L, the offeror will be requested to submit an R&S plan and explain how R&S surges will be handled under the DFARS surge option clause and/or any other surge provision/clause developed. Section M should set out the appropriate evaluation criteria. Delivery time frames, the quantities of emergency items the offeror can produce, how quickly the

offeror can increase production, and R&S costs are examples of those R&S/surge related elements which can be evaluated.

(b) Adding appropriate R&S/surge provisions. One approach is to establish a separate schedule in the solicitation to include R&S/surge requirements. The schedule may include preplanned surge quantities, estimated quantities or some type of minimum/maximum quantity range. If appropriate, include the Government's delivery requirements or have the offeror provide a monthly delivery schedule showing his/her maximum ability to surge. Contracting officers must also consider the cost of R&S and develop pricing mechanisms to determine this cost. When possible, negotiate contract line items and options which will be obligated only when ordered or exercised. This may be in the form of separate line items and unit prices (or distribution fees under a prime vendor concept) to cover R&S/surge quantities. Contracting officers may also need to consider allowing an extra charge for stocking additional quantities to meet potential R&S requirements. If feasible, prices for R&S/surge quantities may be solicited with the basic award quantity. If a long term vehicle is being used; however, it may be more prudent to solicit and negotiate firm prices (or initially request ceiling prices to be negotiated later) and delivery terms when the emergency requirements materialize. Include the surge option clause (DFARS 252.217-7001) in the solicitation. State that any quantities increased as a result of these provisions are over and above any base and option term quantities awarded/ordered under the basic contract. These provisions must legally bind the offeror to deliver these R&S/surge requirements should they be needed. Accordingly, any R&S/surge provision developed by the contracting officer must be coordinated with the local Office of Counsel and the local contract policy office.

(c) Using the Surge Option Clause (DFARS 252.217-7001) or a modified version tailored for the circumstances in supply contracts for critical items, including items in indefinite delivery contracts from which prime vendors may order. The DFARS surge option clause may be used for planned and unplanned items where R&S is a factor. Any modified version of the clause shall be coordinated with the local Office of Counsel and the local contract policy office.

(d) Adding the use of electronic commerce/electronic data interchange (EC/EDI) into solicitations as part of the Statement of Work (SOW). Develop evaluation factors to evaluate offerors' EC/EDI capability. Consider incentivizing the use of EC/EDI tools which will reduce paperwork and save time by transmitting orders, invoices, shipping notices and other documents electronically.

(e) Incorporating language (e.g., price and delivery terms) covering short term emergencies such as an urgent request from a hospital for a drug item.

(f) Adding provisions to proposed Prime Vendor, (and agile manufacturing/Quick Response solicitations) and, if appropriate, any other proposed solicitations for critical items, to perform periodic stress tests to evaluate the contractor's ability to surge. The stress test can involve actual surge orders and deliveries of items. The test can also be conducted as part of war planning exercises with production personnel developing the exercise scenario and assessing the contractor's ability to perform under those circumstances. Acquisition personnel shall also consider amending current solicitations or modifying existing contracts or shared production agreements to add stress tests where appropriate.

(g) Including provisions in all existing Prime Vendor and Quick Response contracts including their Distribution and Pricing Agreements (DAPAs), subcontracts or other sources of supply arrangements, advising agreement holders that their support may be needed during a wartime situation or other emergency.

(h) Using Indefinite Quantity Contracts (IDCs) is consistent with the Agency's overarching strategy and other benefits. Add language to the solicitation stating that in case of an emergency and/or mobilization, the Government may, at its discretion, as specified in the surge option clause in the contract, increase the maximum IQC ceiling to a specific quantity or dollar value.

(i) Using multi-sourcing techniques to assure maximum supply support. Multi-sourcing for readiness, or the readiness planning to procure from one or more than one source can provide sufficient quantities for emergency and wartime requirements.

(j) Incentivizing contractors to reduce their dependence on Government contracts through expansion of commercial business enterprise while maintaining the capability to deliver military requirements. One approach is to make defense conversion an evaluation factor, giving preference to those offerors who have made or will make effort to

eliminate their dependence on Government contracts and develop and/or expand their commercial base of customers.

(k) In Section L, requiring offerors to provide a description of their network of suppliers, subcontractors, distribution and asset visibility systems and having them indicate what safeguards are built into the system to preclude disruption of deliveries. Possibly provide examples of actions (e.g., labor disputes or natural disasters) which could cause disruption in delivery and have offerors explain how they would continue to meet contractual requirements in spite of those disruptions.

17.9304 Reporting requirement

A Reports Control System (RCS) number has been established for reporting the number of shared production agreements in place each quarter. The RCS number is DLA(Q)2609(MM). Quarterly reports are due to HQ DLA, ATTN: **DLSC**-PON by the 10th working day of the month following the end of the quarter.

PART 19

SMALL BUSINESS PROGRAMS

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19.001 Definitions.

"Fair market price" as defined in the FAR is a price DLA would expect to pay under "normal competitive conditions," which means under full and open competitive conditions (without a reservation, set-aside, preference, or the like).

SUBPART 19.2 - POLICIES

19.201 General policy.

(b)(90) DLA small business specialists are guided by DLAM 9100.1, Small Business Program Operations Manual. Contracting personnel should recognize the assigned responsibilities of these individuals and work cooperatively with them to achieve the objectives of the DLA Small Business and Small Disadvantaged Business Utilization Program and to avoid duplication of effort.

SUBPART 19.3 - DETERMINATION OF STATUS AS A SMALL BUSINESS, **HUBZONE SMALL BUSINESS, OR SMALL DISADVANTAGED BUSINESS CONCERN**

19.307 Solicitation provisions.

(90) *When the provision at FAR 52.219-1, Small Business Program Representations, is used in solicitations issued via electronic means, one of the following provisions shall be used to record information required by FAR 52.219-1, paragraph (b). For purchases below the simplified acquisition threshold (SAT), use the provision at 52.213-9004, Offeror Representations, Certifications, and Fill-in Information--Electronic Commerce; for purchases above the SAT, use 52.219-9004, Small Business Program Representations. See 13.101(b)(2)(91).*

SUBPART 19.5 - SET-ASIDES FOR SMALL BUSINESS

19.503 Setting aside a class of acquisitions **for small business.**

(d) The DD Form 2579, Small Business Coordination Record, shall be used to give written notice of a withdrawal from a class set-aside to the procurement center representative (PCR). The form shall be sent through the office of the Small Business Specialist (SBS). The basis for the withdrawal shall be documented in the remarks section.

19.505 Rejecting Small Business Administration recommendations.

(b) If the chief of the contracting office approves the action of the contracting officer, the next level of appeal shall be the activity commander. If the Commander approves the action of the contracting officer, the PCR shall be so advised and may proceed with the appeal actions prescribed in FAR 19.505(c).

SUBPART 19.6 - CERTIFICATES OF COMPETENCY

19.602 Procedures.

19.602-1 Referral.

(a)(2) Prior to referring a potential contractor to one of the SBA's area offices in accordance with FAR 19.602-1 and DFARS 219.602-1, the contracting officer shall thoroughly review all the pertinent facts available, including the preaward survey (PAS), and make a determination of responsibility in accordance with FAR 9.105-2. This determination should so thoroughly consider all pertinent data and the circumstances of the acquisition that, barring substantial evidence refuting the specific elements for which the contractor was determined nonresponsible, it represents the contracting officer's intention to pursue an appeal if the SBA Headquarters notifies the contracting officer of its intent to issue a certificate of competency (CoC). Evidence to refute the identified elements of nonresponsibility may come from the SBA, the contractor, contract administration office (CAO) personnel, or any credible source, as long as the information uncovered specifically addresses the deficient elements cited in the nonresponsibility determination. Recognizing that valuable lead time may be lost if the CoC procedure is delayed, the contracting officer may initiate the CoC process pending resolution of the type of correctable deficiencies that may have been identified in the PAS.

(90) All contracting activities are encouraged to utilize a standardized and simplified form letter for CoC referrals. DLA Form 1756, Referral of Small Business for Certificate of Competency (CoC) Consideration, is available for this purpose.

19.602-3 Resolving differences between the Agency and the Small Business Administration (SBA).

(a) The contracting officer shall request the SBA to specifically address those elements considered to be unsatisfactory and document the file accordingly. The reconciliation of differences should include, as appropriate, requests for updates and additional data from the CAO personnel responsible for the PAS.

(a)(90) If the SBA notifies the contracting officer of its intent to issue a CoC, the contracting officer shall either:

(1) Appeal the issuance of the CoC in accordance with DFARS 219.602-3(c)(i), as detailed below; or,

(2) Using the information currently available, determine the contractor to be responsible, document the file, and proceed with contract award; or,

(3) Determine to accept the CoC, without determining the contractor to be responsible. This alternative allows consideration of the circumstances of an individual acquisition which may make accepting the CoC the most reasonable alternative. Notice of the award shall be provided to the division chief (or another appropriate level above the contracting officer), to the activity postaward monitor, and to the contractor general file (see FAR 4.801(c)(3)).

(c)(90) If the contracting officer intends to appeal the issuance of the CoC, the contracting officer shall request the **Small Business Specialist (SBS)** to notify the SBA Headquarters of the intent to appeal the CoC in accordance with DFARS 219.602-3(c)(i). Within 3 workdays of receiving the SBA Headquarters notification of its intention to uphold the SBA Region's decision to issue a CoC, the contracting officer shall fax a report to **DLSC**-PPP summarizing the pertinent facts of the case. (Voluminous reports should be express mailed.) The pertinent facts shall include: name of the prospective contractor; item; quantity; dollar value; the specific elements for which the prospective contractor was determined to be nonresponsible; a copy of the pertinent portions of the preaward survey; SBA's rationale for issuing the CoC; and, the proposed alternative means of satisfying the requirements. A copy of this report shall also be forwarded to the SBS at the activity. The Executive Director, Procurement Management shall review the information provided and advise the contracting officer within 5 workdays of the decision to support the appeal, or to recommend acceptance of the CoC. The Executive Director, Procurement Management shall provide a copy of that decision to the Director, Small and Disadvantaged Business Utilization (DDAS). If the Executive Director, Procurement Management elects to support the formal appeal, the contracting officer will be advised to expeditiously prepare the formal appeal and forward it through the activity SBS to DDAS in accordance with DFARS 219.602-3(c). The formal appeal shall include at a minimum: the particulars of the contract, (i.e., item, quantity, etc.); the PAS; the contracting officer's determination of nonresponsibility; any appropriate update on the contractor's progress toward becoming responsible; and a discussion of the attempts made to reconcile differences with the SBA. The Executive Director, Procurement Management shall be provided a simultaneous copy of the appeal. Formal appeals shall be forwarded for receipt at DLA within 5 workdays of notice that the Executive Director, Procurement Management supports the contracting officer's intent to appeal. Formal appeals should be indexed and tabbed.

(91) Once the contracting office requests the SBA Headquarters to review the intention of the Area office to issue a CoC, DLA contracting personnel are not authorized to waive the right to appeal, or to forfeit an appeal, without the concurrence of the Executive Director, Procurement Management. Requests for such concurrence shall include substantially the same type of information submitted in the report notifying the Executive Director, Procurement Management of the contracting officer's intention to appeal.

(92) All reports submitted by the contracting officer to the Executive Director, Procurement Management concerning CoC appeals shall be forwarded through the chief of the contracting office (see 2.101) for all other activities.

(93) The requirements of subparagraphs 19.602-3(c)(90) and (91) do not apply to simplified acquisitions. Contracting offices are authorized to develop local procedures to process appeals on simplified acquisitions.

19.602-4 Awarding the contract.

(c)(90) If the activity has not heard from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter

was referred to determine whether a CoC is being processed. The contract file shall be documented to reflect that this action was taken.

(91) In awarding a simplified acquisition:

(i) The contracting officer shall not agree to a longer period of time than 15 business days for the SBA reply before proceeding to award to another offeror unless the extension is approved by the chief of the contracting office.

(ii) The contracting officer may proceed in accordance with FAR 19.602-4(c) when 15 calendar days have elapsed since the date of referral of the matter to SBA.

SUBPART 19.7 - THE SMALL BUSINESS SUBCONTRACTING PROGRAM

19.705 Responsibilities of the contracting officer under the subcontracting assistance program.

19.705-4 Reviewing the subcontracting plan.

(d)(7) The services of the activity and CAO Small Business Specialist (SBS) are available to assist in review of subcontracting plans. Requests for review of a subcontracting plan by the cognizant CAO shall be forwarded through the SBS at the contracting office to the SBS at the CAO. The buyer should provide a reasonable length of time (generally, at least 7 working days) for the CAO review. The results of a CAO review, and any recommendations which arise therefrom, shall be evaluated by the contracting officer prior to approval of the subcontracting plan. The contract file shall be documented to reflect the review and the contracting officer's final decision on the goal accepted.

19.790 Responsibility for reviewing the subcontracting program.

When administration of contracts containing the Small Business, Small Disadvantaged Business, Women-Owned Small Business Subcontracting Plan clause is retained by the contracting office, the procedures in 42.202(e)(90) apply.

SUBPART 19.8 - CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

19.803 Selecting acquisitions for the 8(a) Program.

(a)(4)(90) The contracting office shall assure that follow-on Section 8(a) contract support will be provided for that period of time reflected in the SBA approved business plan. In furtherance of this, close coordination between the contracting officer and SBS is essential.

(c)(90) In addition to responding to SBA requests for potential requirements to support an approved business plan of a small disadvantaged firm, it is the policy of DLA to identify other requirements which are considered suitable for placement with SBA under the Section 8(a) program. Contracting officers will consider the Section 8(a) program as a possible method of satisfying all new requirements being processed for contract action. Special attention will be given to those commodities and services which are anticipated to be recurring requirements and for which there are a limited number of prospective small business sources.

19.804-2 Agency offering.

(a)(1) The SBA notification, *if required (see DFARS 219.804-2(2))*, shall be provided in writing through the SBS and a copy provided to the local SBA PCR. If no response is received from SBA by the *applicable* due date, *(i.e., within 10 working days of receipt of the offering in accordance with FAR 19.804-3(a) or within 5 working days of receipt in accordance with DFARS 219.804-3)*, the requirement may be withdrawn or the time extended at the option of the contracting office.

19.804-90 Withdrawal of requirements.

(a) When circumstances arise indicating a need to withdraw requirements previously committed for Section 8(a) contracting, the contracting officer shall seek SBA agreement for such withdrawal through the SBS. If the SBA does not agree with such withdrawal, complete data supporting such proposed withdrawal shall be provided through the SBS to the Small and Disadvantaged Business Utilization Office for review and concurrence or nonconcurrence.

(b) When a requirement previously committed for Section 8(a) contracting is withdrawn and subsequently acquired by normal acquisition methods, the contracting officer shall, within 15 days after award, provide a summary of the facts to the SBS on each item stating: (i) the DLA estimated fair market price (FMP), (ii) the SBA final offered price, and (iii) the final contract price.

19.806 Pricing the 8(a) contract.

(b) Although an 8(a) supplier may be able to justify a price exceeding the FMP, award at a price that exceeds FMP is prohibited (see section 921 of P.L. 99-661). Occasionally, cost and price analysis discloses that award should be made at a price below FMP. But in most cases, the analysis supports the FMP as fair and equitable to both parties and the award is consummated at that price.

19.807 Estimating fair market price.

(a) The FMP is intended to reflect award prices attainable to the Government if purchased on a fully competitive basis in the current open market place.

(b) In determining the FMP, the contracting officer, whether using previous buys, a market survey, pricing data, and/or cost or pricing data, would exclude any abnormally priced offers that can be identified. This includes prices which, although reasonable, were found to have been abnormally low or high due to special or non-recurring circumstances, such as a one-time price reduction, premium charge, distress sale, etc. The FMP should normally be derived based on adjusting the lowest (except for repeat purchases - see 19.807(c)(90)) remaining reasonable price consistent with the Government's requirements in the manner specified in FAR and DLAD 19.807(c). No other price differential or adjustment factor shall be used (e.g., for independent government estimate inaccuracies, for differences between fully competitive awards and reservations, for differences between awards to manufacturers and to dealers, etc.).

(c)(90) Establishing an FMP does not mean that the section 8(a) subcontractor will always be able to meet the most recent, lowest, and /or comparable price obtained through full and open competition or sealed bidding.

(91) When there have been recent awards for comparable quantities of the item being purchased, which resulted from "normal competitive conditions," the most recent award shall be the basis upon which FMP is determined. A comparable quantity is not necessarily a similar quantity but must be one to which a logical price comparison can be made with the current quantity. All recent award prices are to be considered in determining if the most recent comparable price is representative of "normal competitive conditions." If the most recent award price is not representative of "normal competitive conditions," the file shall be so documented and the next most recent comparable award price shall be considered as the basis for the FMP determination.

(92) Award of a section 8(a) contract shall not be delayed pending award of a recently issued solicitation which resulted in competitively priced offers, unless there is no reasonable basis for determining FMP other than the pending competitive award price.

(93) When a solicitation for a particular item would generally result in different unit prices for different line items, it may be desirable to develop separate FMPs for each line item. However, it is not permissible to establish a range of FMPs for any item or group of items.

(94) Averaging of previous bid or award prices is prohibited.

(95) Previous section 8(a) award prices may be used to determine the current FMP only when: (a) a suitable previous competitive price is not available; and (b) when the previous FMP was established in accordance with FAR and DLAD guidelines.

(96) A format similar to that in paragraph **19.807(91)**, below, shall be used to document consideration of all relevant factors affecting price used to adjust the previous award price (base FMP), or the reason the factors were not adjusted.

(97) Once the FMP is established, considering previous award prices and all relevant factors affecting price, it will be the highest price that DLA will pay, except when a revised FMP, established within the FAR/DLAD guidelines, is fully supported and documented by the contracting officer.

FMP for Current Requirement
(Base Unit Price + or - Net Adjustment) _____

4. Discussions (Use reverse if necessary)

5. Coordination/Approval:
Buyer's Signature/Date

Price Analyst Signature/Date

Prepared _____ Reviewed _____

Concur _____ Nonconcur _____

Approved: Contracting Officer _____ Date _____

19.812 Contract administration.

(d) The contracting officer or authorized representative shall notify the SBS prior to initiation of any adverse action against an SBA subcontractor. In cases involving initiation of default procedures, at the request of the SBS, the contracting officer shall provide the facts required for notification to DDAS.

(90) Requests for technical and/or management assistance which are in excess of DSC or DCMC capability and resources shall be referred through the SBS to DDAS. Through agreement between HQ DLA and SBA, technical and management assistance teams can, under certain circumstances, be made available to augment assistance provided by the contracting officer.

(91) As described in FAR 42.5, postaward orientation conferences with contractors **are conducted** to assure a clear understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties. The contracting officer or technical representative should initiate a request for such a conference on all first time 8(a) contractors and when the 8(a) firm has experienced problems. Assure that all matters requiring clarification or resolution are considered and contractual requirements are explained. Specific attention shall be given to the requirements of statutes, executive orders, and labor provisions.

(92) Early notification to the SBA of deficiencies in contract performance by a Section 8(a) firm is particularly important in the administration of 8(a) contracts.

(93) Whenever it becomes known that the 8(a) subcontractor has encountered problems which could jeopardize contract performance, the SBS shall be notified. The contracting officer or authorized representative shall provide all reasonable assistance to the subcontractor to correct deficiencies.

SUBPART 19.71 - PILOT MENTOR-PROTEGE PROGRAM

19.7100 Scope.

The Mentoring Business Agreements (MBA) Program (*see Subpart 19.90, below*) is a DLA variation on the DoD Pilot Mentor-Protege Program, which was established under Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended. The DLA program is not intended to supersede the DoD program.

SUBPART 19.90 - DLA MENTORING BUSINESS AGREEMENTS (MBA) PROGRAM

19.9001 General.

The Mentoring Business Agreements (MBA) Program is a DLA variation on the DoD Pilot Mentor-Protege Program (although it does not supersede the latter). Under the DLA

Program, experienced (generally large business) entities serve as mentors to selected proteges in reciprocally rewarding relationships. The protege is ordinarily a small, small disadvantaged, or women-owned small business; however, it may also be a Javits-Wagner-O'Day Act (JWOD)-qualified nonprofit agency for the blind or other severely disabled, approved by the Committee for Purchase from People Who Are Blind or Severely Disabled. This Agency program differs from the DoD Mentor-Protege Program in that it:

- (a) is not statutorily mandated;
- (b) will remain in effect so long as it achieves the purposes for which it is intended;
- (c) permits the selection of any small business or JWOD-qualified nonprofit agency as a protege;
- (d) does not require potential mentors to undergo a substantial approval process in order to qualify for that role, or to identify intended proteges "up front";
- (e) is determined successful more by the establishment of long-term business relationships between mentors and proteges (and perhaps the latter's improved business processes and penetration into new markets) than by numbers and dollar values of subcontracts with SDBs or any other category of small entity; and
- (f) offers no direct monetary incentives to contractors. (Instead, it relies on a market-based incentive consisting of the extension of favorable consideration to the mentor under the instant and future source selections, and within the context of option exercise or order placement under multiple-award contracts.)

19.9002 Policy.

Through the DLA MBA Program, experienced prime contractors (large or small, including JWOD entities) extend developmental assistance, with Government encouragement, to small, small disadvantaged, and women-owned small businesses or JWOD entities in return for the recipient's providing value-added services and/or products. The mentor provides the benefit of its managerial expertise, technical capabilities, market knowledge and penetration, and economies of scale. The protege provides a distinctive proficiency or capability (such as a specialized product, service, or, potentially, admission into its own market) which supports the mentor's business objectives.

19.9003 Scope.

Contractor participation in the DLA MBA Program shall be the focus of an evaluation factor to be included in all solicitations or other announcements for long-term contracting arrangements expected to exceed \$500,000. This requirement shall not be mandatory for contracts for commercial items, unless logistics services in support of those items are also being acquired under the same contract. Any other exception to this requirement must be approved by the chief of the contracting office, without power of delegation. An explanation for the exception must be included in the solicitation file, and a copy must accompany the report required in 19.9006(e). Inclusion of the program coverage in solicitations below \$500,000, though optional, is encouraged in all appropriate circumstances.

19.9004 Purpose and approach.

- (a) There are three purposes served by the DLA MBA Program. It is intended to:
 - (1) Provide maximum opportunity to the small business/JWOD community to participate in DLA's reengineered business processes at either the prime or subcontract level.
 - (2) Remove the tendency on the part of some small businesses to depend on doing business with the Government exclusively, and to lead them to new opportunities that are chiefly available today in the commercial marketplace.
 - (3) Foster private-sector, mutually beneficial mentor-protege relationships that transcend performance under specific contracts. These long-term relationships can lead to equally long-term stability and opportunities for growth.
- (b) The Government benefit realized is the establishment of stronger, better sources - the large or experienced and the small or disadvantaged entity - in whose abilities there can be greater confidence than ever before. The mentoring process strengthens the likelihood of a small firm's being able to compete for DLA contracts at either the prime

or the subcontract level, and provides another outlet, vision, and opportunity to those whose prior range of operations was unnecessarily limited.

(c) A typical approach to MBA could be an arrangement between two entities who are both in similar business lines, with the prime contractor providing the advantage of its experience, technical capabilities, and business networks to the protege. Another could involve a prime from the warehousing/distribution business sector teaming with one or more proteges - not only in product lines, but also in software development, management of hazardous materials, transportation, electronic communications, and other such areas. The DLA MBA Program can be applied across the entire spectrum of DLA commodities and required services (but see 19.9003 for the commercial-item supply contract exception to mandatory inclusion).

19.9005 Contracting officer responsibilities and program considerations.

(a) DLA contracting offices will work together with their respective small business offices as catalysts and facilitators, identifying entities willing to participate as mentors. Prospective prime contractors are responsible for selecting small, small disadvantaged, and women-owned small businesses (or JWOD entities) for participation with them in the Program. However, when requested, the DLA contracting office and/or small business office will assist prospective prime contractors in the process of locating small entities as potential proteges. The prime must establish for itself the parameters of its involvement under the Program; its proposal for participation, identifying the assistance already undertaken or to be rendered, shall be incorporated into its contract with the Government. The prospective contractor is obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protege based on this plan. (Thus, the MBA, by its being expressly contemplated by the mentor's proposal and by the latter document's incorporation into the prime contract with DLA, binds the mentor firm to both the protege and the Government.)

(b) Even though the Government does not enjoy privity of contract with the protege (and therefore cannot be a party to, or require a copy of, the MBA), the contracting officer shall inform the prospective offeror/mentor that the future agreement must reflect the plan included with the latter's offer.

(1) Notwithstanding that the agreement is not made a deliverable under the contract, or that a copy cannot otherwise be demanded by the contracting officer, he or she shall nevertheless request that the agreement be made available to the Government. The contractor shall be advised that any agreement so provided will be compared with the proposal contained in the contract with DLA, to ensure that it adequately reflects the mentor's obligations expressed within that contract.

(c) DLA contracting offices shall lead by example in this mentoring concept by placing greater emphasis on assisting small, small disadvantaged, and women-owned small businesses through their Business Counseling Center services and other functions/specialists throughout the activity. These contracting offices will actively promote and participate in industry-sponsored conferences and organizational seminars/meetings, using the events as a forum to discuss and forward Program goals.

(d) To promote Program participation, the DLA MBA Program shall (as stated in 19.9003) be included as an evaluation factor in best-value acquisitions that meet applicability standards. Prospective offerors shall be asked to include, as part of their overall proposal, a plan to participate in the Program as a mentor; each plan must delineate the assistance already undertaken or to be rendered to a protege. The factor is an element in the overall award decision, and the proposal provided by a successful offeror shall be incorporated into the resulting contract and monitored during performance by the contracting officer and other pertinent parties.

(1) Participation in the MBA Program is entirely elective; however, proposals that demonstrate a strong commitment to affording small, small disadvantaged, and women-owned small businesses a real opportunity to compete in the reengineered business environment will ordinarily receive a more favorable rating for this evaluation factor than those that demonstrate a lesser or no such commitment. (Examples of this type of "real opportunity" include the mentor's developing the protege into a stronger competitor by designating the latter a "valued supplier," or by permitting it to perform part of the contract work in conjunction with the prime through a type of teaming arrangement.) There is no limit to the type of assistance the prime contractor may provide to achieve its Program objectives. Of course, the "helping hand" that any firm can extend necessarily depends upon unique variables, including its business sector, range of market penetration, capitalization, competition, location, etc. The Government shall determine the adequacy of the contractor's proposal, but shall not dictate the kind of assistance

to be provided.

(e) For applicable contract actions, the contracting officer shall provide incentives for prime contractors to establish and administer MBA arrangements. These include:

(1) evaluation of current or proposed participation in the MBA Program as an independent factor (separate from any overall past performance evaluation factor) in source selection;

(2) use of MBA performance under previous contracts as part of the overall past performance evaluation factor in source selection;

(3) evaluation of present MBA performance in determining placement of orders under multiple-award contracts; and/or

(4) consideration of contractor present and past MBA performance in the exercise of options for the follow-on years of long-term contracts.

(f) The DLA MBA Program shall be monitored, and performance under it analyzed, by the contracting officer and the cognizant small business specialist(s) to ensure the intended purposes of the Program are being achieved. Because activity must be evaluated specifically in terms of the contractor's commitment to the advancement and viability of a protege, and because oversight reviews must be conducted in accordance with the plan contained in the prime's contract with the Government, rather than in accordance with the agreement (see 19.9006(a) through (c)), care must be taken not to assess intentions, without regard to outcomes. The value of both effort expended and results achieved must be considered in each individual mentoring situation.

19.9006 Reporting.

(a) Participating mentors shall be required to submit periodic progress reports on the fulfillment of their proposals. Furthermore, when a mentor voluntarily furnishes a copy of the MBA to the Government, the contracting officer shall compare the later agreement to the mentor's earlier proposal.

(b) All accomplishments against MBA proposals shall be reviewed semi-annually with the mentor and the protege by the contracting officer and the cognizant small business specialists from the buying activity and the DCMC component(s). (Administration of contracts containing the MBA provision/clause should ordinarily be delegated to DCMC; however, when overall administration is retained, supporting administration by DCMC must nevertheless be requested for purposes of Program oversight. See, generally, 42.202(e)(90). Activity/component Commanders or their Deputies are strongly encouraged to participate in such reviews. HQ DLA (DLSC-P and DDAS) shall also be afforded an opportunity to participate.

(c) Not only shall small business specialists monitor contractor activity under the plan, but they shall also, at least implicitly, oversee and report on performance under the agreement, when that document has been provided to the Government. Note, though, that even if activity in accordance with the agreement is able to be monitored, such information cannot be used as the basis for any contractual determination (including source selection, option exercise, or order placement), because the mentor's contractual duties to DLA extend only to the contents of the plan. Similarly, a formal assessment of the protege's fulfillment of its undertakings (as set forth in the MBA) cannot be made, because that party's contractual obligations extend only to the prime. Despite this, the general monitoring of all aspects of performance is one of the Government's primary duties under the MBA Program. A proper balance must therefore be maintained between the demands occasioned by legitimate Government interests, and respect for a contractual relationship to which the Government is not a party.

(d) Wherever possible, this Program will utilize existing reporting mechanisms to evaluate prime contractor compliance.

(e) A Reports Control System (RCS) number has been established for reporting the number of MBAs in place each fiscal quarter. Additionally, you are required to indicate whether, for the applicable buys, offers were received from both small/JWOD and large entities, whether the successful offeror chose to participate in the MBA program, and, if so, whether the successful offeror was a small/JWOD or a large business. The RCS number remains DLA(Q)2609(MM). These reports are mandatory, and are due from the corporate contract policy office at each Center to HQ DLA, ATTN: DLSC-PPP, by the 10th working day of the month following the end of the quarter.

(f) Notification of **a mentor's and protege's arrangements regarding signing ceremonies for these MBA agreements** shall, whenever practicable, be provided to Headquarters, DLA (DDAS and DLSC-PPP) at least two weeks prior to **the planned event** so that DLA executives may attend, **at their election**. Formal ceremonies with appropriate publicity are encouraged.

19.9007 Solicitation provision and contract clause.

A provision substantially the same as the one at 52.219-9002 shall be inserted in all solicitations meeting the criteria in **19.9003**, above. **Additionally, a** clause substantially the same as the one at 52.219-9003 shall be included in all solicitations and contracts containing provision 52.219-9002.

PART 22

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22.001 Definition.

"Labor advisor" means:

(1) Directorate of Procurement, MMPPP, for all matters except those involving contracts administered by DCMC;

(2) Directorate of Contract Management, AQOG, for matters involving contracts administered by DCMC.

SUBPART 22.1 - BASIC LABOR POLICIES

22.101 Labor relations.

22.101-1 General.

(a) For contracts administered by DCMC, the Industrial Labor Relations Officer (ILRO) in the Directorate of Contract Management within each DCMD provides services to contracting officers in accordance with DLA Directive 5000.4, Contract Management ("The One Book"), Part VI, Chapter 18. For contracts not administered by DCMC, contact the labor advisor to determine if ILRO services can be obtained through the Directorate of Contract Management, AQOG.

(90) Whenever labor representatives request permission to enter a DLA installation on which private contract employees are engaged in contract work to conduct union business during working hours, the commanding officer may admit such representatives, provided: the presence and activities of the labor representatives will not interfere with the progress of the contract work involved; and the entry of such representatives to the installation shall not violate pertinent safety or security regulations. Commanding officers shall take all necessary action to enforce the above policy and facilitate ready access to worksites within military installations. One method which has met with success in appropriate situations is the maintenance by commanding officers of a list of labor representatives who have been cleared with regard to safety and security considerations and who may be admitted into respective installations to conduct union business. The determination as to who are appropriate labor representatives should be made by the commanding officer on recommendation of the contracting officer and after consultation with local union officials. Business offices or desk space for labor organizations for solicitation of membership, collection of dues, or other business of the labor organization not directly connected with the contract work, shall not be permitted on the installation except for the routine functions of the working steward whose union duties are incidental to the steward's assigned job. In the event that a commanding officer of an installation or the contracting officer or representative of the contracting officer denies entry to a labor representative for any reason, such officer shall notify, through channels, Headquarters DLA, ATTN: **DLSC**-PPP. Such notification shall include the reasons

for denial, including names, addresses of representatives denied entry, and union affiliation, if known, of such representatives.

22.103-4 Approvals.

(a) The approving official for contractor's requests for overtime is the chief of the contracting office.

22.103-5 Contract clauses.

(90) The clause at 52.222-9000, Davis-Bacon Act - Price Adjustment shall be included in contracts for installation support and maintenance and repair containing option or multiyear provisions.

SUBPART 22.4 - LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

22.404-3 Procedures for requesting wage determinations.

(b) The office responsible for the preparation of specifications or award of contracts shall initiate the request. Send the original SF 308, Request for Wage Determination and Response to Request, to the Department of Labor with a copy to Headquarters DLA, ATTN: **DLSC-PPP**.

22.406-8 Investigations.

(d) Contracting officer's report. (1) For all contracts except those administered by DCMC, forward the report to HQ DLA, ATTN: **DLSC-PPP**. For contracts administered by DCMC, forward the report to Defense Contract Management Command, **DCMC-OG**. Forward the recommendations of the HCA with the report.

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SUBPART 23.1 - POLLUTION CONTROL AND CLEAN AIR AND WATER

23.107 Compliance responsibilities.

The contracting officer shall report violations of the clean air or water standards which come to his/her attention to HQ DLA, ATTN: **DLSC**-POA.

SUBPART 23.3 - HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

23.303 Contract clause.

In addition to the clauses set forth at FAR 52.223-3 and DFARS 252.223-7001, the contracting officer shall insert a clause substantially the same as 52.223-9000, Material Safety Data Sheets and Hazard Warning Labels, in solicitations and contracts for items described in FAR 23.302(c).

- (90) Notwithstanding paragraph 4. of **the latest version of** Federal Standard (FED-STD) 313, the contractor shall submit copies of Material Safety Data Sheets (MSDSs) and Hazard Warning Labels (HWLs) to the contracting office, rather than directly to DSCR. The contracting officer, in turn, shall provide a copy of each MSDS, as well as each HWL, received from apparently successful offerors to the address indicated below for entry into the DLA Hazardous Material Information System:

- (91) Defense Supply Center Richmond
ATTN: DSCR-**VBA**
Richmond, VA 23297-5000

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SUBPART 25.1 - BUY AMERICAN ACT - SUPPLIES

25.102 Policy.

(b) Prepare nonavailability determinations in Determination and Findings (D&F) form.

(b)(ii) For purposes of determining the approval level, do not add option totals to basic award amounts. Prior to exercising an option, however, a new determination of nonavailability (for the option total only) must be made.

(b)(ii)(D) The authority to approve determinations of nonavailability for acquisitions over \$2 million is delegated to the HCA without redelegation authority. This delegation also applies to the following determinations tied to these approval levels:

(a) Inconsistent with the public interest under the Buy American Act for qualifying countries (DFARS 225.872-4(c));

(b) Nonavailability under the Defense Appropriations Act restrictions on food, clothing, fabrics, and specialty metals (DFARS 225.7002-2(a) and DLAD 25.7002-2(a)); and

25.102-90 Procedure for submission of waiver requests.

Submit requests for waivers which require approval at levels above the Head of the contracting activity (HCA) or by the Executive Director, Procurement Management, as HCA, to HQ DLA, ATTN: **DLSC**-PPP. Include the rationale for the waiver as well as all relevant facts.

SUBPART 25.3 - BALANCE OF PAYMENTS PROGRAM

25.302 Policy.

(b)(i) Submit requests for determinations by the Executive Director, Procurement Management, in the form of a proposed D&F to HQ DLA, ATTN: **DLSC-PPP**. Include the rationale for the determination as well as all relevant facts. When the request is made under FAR 25.3, include a statement as to the consideration given to foregoing the requirement or providing a domestic substitute.

(b)(ii) For acquisitions estimated not to exceed \$500,000, the authority in DFARS 225.302(b)(i) is delegated to the HCA. This authority may be redelegated to the chiefs of the contracting offices. DSCR may redelegate authority to purchase foreign books and publications not to exceed \$10,000 to the contracting officer. Document all determinations in the contract file.

SUBPART 25.6 - CUSTOMS AND DUTIES

25.604 Exempted supplies.

(2) The Commander, DFSC, or designee, is authorized to execute duty-free entry certificates for the supplies in DFARS 225.604(b)(i).

SUBPART 25.7 - RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

25.703 Exceptions.

(b) Contracting officer determinations under FAR 25.703(a) shall be in writing and made part of the contract file. For other than small purchases, forward requests for Agency Head approval to HQ DLA, ATTN: **DLSC-PPP**, and include a full justification, with all pertinent details, for purchasing from a restricted source.

SUBPART 25.8 - INTERNATIONAL AGREEMENTS AND COORDINATION

25.870 Contracting with Canadian contractors.

25.870-1 General

(e)(90) See 15.403-3(c)(4)(A)(90)(91) for price analysis and price reasonableness determination requirements for offers from Canadian Commercial Corporation.

SUBPART 25.70 - AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND
OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

25.7002 Restriction on food, clothing, fabrics, and specialty metals.

25.7002-2 Exceptions.

(a) Authority to approve nonavailability determinations is delegated to the same levels that are established in DFARS 225.102(b)(ii) for Buy American Act nonavailability determinations.

25.7002-4 Contract clauses.

(c) Do not use Alternate I of the clause at 252.225-7014, Preference for Domestic Specialty Metals, unless a Military Department specifically indicates that use of the alternate clause is required because the acquisition is being made under one of the enumerated programs.

SUBPART 25.73 - ACQUISITIONS FOR FOREIGN MILITARY SALES

25.7302-90 Foreign Military Sales (FMS) shipping instructions.

(a) In order to reduce misdirected shipments of FMS materiel, do not place shipping addresses on FMS contracts except as provided in paragraphs (b) and (c) below. Instead, place a notice in the contract requiring the contractor to contact the transportation officer (TO) **at the contracting activity that awarded the contract or that placed the order, unless contract administration responsibilities were assigned to an office other than the contracting activity that awarded the contract.** Orders and contracts assigned to DCMC for administration shall include a notice to require the contractor to submit a DD

Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the transportation officer at the contract administration office for shipping instructions. Use a clause substantially the same as that provided at **52.225-9002**, FMS Shipping Instructions (**June 1998**).

(b) A shipping address may be placed in FMS contracts if complete shipment is anticipated within 120 days of award.

(c) Contracts contemplating using f.o.b. origin shipping terms may include a firm shipping address.

(d) Additional contract provisions may be appropriate to satisfy unique requirements for requisitions that contain a "Z" or "Y" in card column 46. However, do not list the freight forwarder or embassy addresses in the contract.

PART 27

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27.000 Scope of section.

27.000-90 Authority.

The General Counsel, HQ DLA, is authorized to act for the Director, DLA, on all patent, copyright, rights in data, and trademark matters arising in the DLA. Any question on such matters shall be referred to the General Counsel, HQ DLA.

27.000-91 Supply of patented components as Government-furnished property (GFP).

When patented or proprietary components are required in end items purchased by DLA activities, particularly military type items, consideration may be given to furnishing such components as GFP.

SUBPART 27.2 - PATENTS

27.203 Patent indemnification of Government by contractor.
27.203-6 Waiver of indemnity by the Government.

Specific patents may be excluded in accordance with FAR 27.203-6 only with the prior approval of the General Counsel, HQ DLA.

27.204 Reporting of royalties - anticipated or paid.

Counsel for the contracting activity concerned will forward to the General Counsel, HQ DLA, a copy of each royalty report received in accordance with FAR 27.204 which indicated that royalties in excess of \$250 have been paid or are to be paid to any person or firm.

27.205 Adjustment of royalties.

The report required by FAR 27.205 shall be made to counsel for the contracting office concerned who shall forward the report to the General Counsel, HQ DLA, for appropriate action.

SUBPART 27.3 - PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

27.302 Policy.
27.302-90 Processing of infringement claims.

(a) Any direct or indirect charge or threat of patent, trademark, or copyright infringement received by any contracting office, shall be referred to counsel for the activity who will notify and coordinate all actions on such cases with the General Counsel, HQ DLA.

(b) The General Counsel, HQ DLA is hereby authorized to make acquisitions in accordance with 10 U.S.C. 2386 and to enter into agreements in settlement of claims under the Foreign Assistance Act of 1961 (22 U.S.C. 2356) and 35 U.S.C. 181-188. The General Counsel, HQ DLA shall coordinate with the Departments of the Army, Navy, and Air Force in the processing and final disposition of each claim.

SUBPART 27.6 - FOREIGN LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

27.675-91 Review of agreements.

Proposed foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns forwarded to the DLA under the provisions of DFARS 227.675-2 shall be referred to the General Counsel, HQ DLA for action in accordance with DFARS 227.675-1.

PART 28

BONDS AND INSURANCE

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- 28.307-1 Group insurance plans.

SUBPART 28.1 - BONDS *AND OTHER FINANCIAL PROTECTIONS*

- 28.103 Performance and payment bonds for other than construction contracts.
- 28.106 Administration.
- 28.106-90 Review of bonds and consent of surety.

All bonds and all consents of surety shall be reviewed by local counsel for legal sufficiency. The original signed bond shall subsequently be retained with the original copy of the contract when practical.

SUBPART 28.3 - INSURANCE

- 28.305 Overseas workers' compensation and war-hazard insurance.

(d)(90) For the Defense Logistics Agency, submit waivers to the *Commander, Defense Contract Management Command (DCMC)*.

- 28.307 Insurance under cost-reimbursement contracts.

- 28.307-1 Group insurance plans.

(90) For the Defense Logistics Agency, submit insurance policies under the Defense Department Group Term Insurance Plan to the *Commander, Defense Contract Management Command (DCMC)*, for approval.

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TAXES

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SUBPART 29.4 - CONTRACT CLAUSES

29.490 Kentucky Sales and Use Tax - application for exemption.

SUBPART 29.4 - CONTRACT CLAUSES

29.490 Kentucky Sales and Use Tax - application for exemption.

(a) The Commonwealth of Kentucky provides procedures for obtaining an exemption to the Kentucky Sales and Use Tax for sales made directly to the Federal Government (Kentucky Regulation 103 KAR 30:235). DLA activities may apply for this exemption. Requests for copies of the application forms should be directed to:

Department of Revenue
Sales and Severance Tax Division
Annex Building
Frankfort, KY 40601

Copies are also available from the Department's 11 regional offices.

(b) The regulation and instructions on the reverse side of the application form require each administrative division within a Federal unit, which makes purchases in its own name, to file a separate application. Kentucky will then issue an exemption authorization letter to that unit. Each contractor in Kentucky doing business with that unit will then request a copy of this exemption authorization letter. Once we furnish a copy to our contractors, they should retain it in their files for use in connection with claiming deductions in their state sales and use tax returns with respect to sales to the Federal Government.

(c) Solicitations which anticipate responses from firms in the Commonwealth of Kentucky should include the clause at 52.229-9001.

PART 30

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- 30.7100 Definitions**
- 30.7101 Calculations**
- 30.7101-1 Cost of money**

SUBPART 30.2 - CAS PROGRAM REQUIREMENTS

- 30.201 Contract requirements.
- 30.201-1 CAS applicability.

Refer to 30.201-3(a) in determining whether the exemption at 9901.201-1(b)(2) applies for negotiated contracts and subcontracts not in excess of \$500,000.

- 30.201-3 Solicitation provisions.

(a) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, shall be included in negotiated solicitations expected to result in contracts exceeding \$500,000, as specified in 48 CFR 9903.201. To qualify, the "net award" calculated at the time of contracting action must be expected to exceed the CAS \$500,000 threshold. The calculation shall include yet-to-be-provided incremental funding and the potential value of orders expected to be issued over the life of the contract, including options, excluding any not likely to be exercised. The reason for any exclusions shall be documented.

- 30.201-4 Contract clauses.

(90) Refer to 30.201-3(a) to determine whether the award meets the \$500,000 threshold and thus should retain the solicitation provision specified at FAR 30.201-3(a) and the clauses specified at FAR 30.201-4(a)-(e).

- 30.201-5 Waiver.

(90) Prior to referral by the chief of the contracting office to HQ DLA, ATTN: **DLSC-PPB**, of a proposed waiver of the CAS requirements, the Commander shall personally negotiate with the proposed contractor and attempt to obtain the required statement(s). When it is determined that the Commander should not personally conduct negotiations, a detailed memorandum setting forth the rationale shall be forwarded with the referral to HQ DLA.

SUBPART 30.70 - FACILITIES CAPITAL EMPLOYED FOR FACILITIES IN USE

- 30.7001 Use of DD Form 1861.
- 30.7001-2 Completion instructions.

(e) The interest rate **cited in the corresponding FAR paragraph is** determined by the Secretary of the Treasury **under the criteria established by the Renegotiation Act of 1971, and used pursuant to the Contract Disputes Act of 1978 and the Prompt Payment Act.**

<http://www.publicdebt.treas.gov/opdprmt2.htm>. The current rate may also be obtained from the local cost and price analysis branch/element.

The annual rate for the forthcoming semi-annual period is published in the Federal Register during the fourth week of December and June. **The rate and information on its application** is forwarded each six months via a PROCLTR and is also available on the worldwide web at <http://www.publicdebt.treas.gov/opdprmt2.htm>. **This information** may also be obtained from the local cost and price analysis branch/element.

30.7004 Administrative procedures.

30.7004-1 Forms CASB-CMF.

(c) A local provision requiring submission of completed Form(s) CASB-CMF or the cost of money factors, and advice of the review/approval status of such data by the cognizant administrative contracting officer (ACO) for each contractor fiscal year (or portion) covering the planned period of contract performance, shall be included in solicitations expected to exceed \$500,000 which require submission of cost or pricing data.

30.7004-2 DD Form 1861.

(b)(3) A local provision requiring submission of the contractor's land, buildings, and equipment distribution percentages necessary to complete DD Form(s) 1861, Contract Facilities Capital Cost of Money, for each contractor fiscal year (or portion) covering the planned period of contract performance, and advice of the review/approval status of such data by the cognizant ACO, shall be included in solicitations expected to exceed \$500,000 which require submission of cost or pricing data.

30.7100 Definitions

(c)(1) *For information on the interest rate specified at this DFARS cite, see 30.7001-2(e).*

30.7101 Calculations.

30.7101-1 Cost of money

(a) *For information on the interest rate specified at this DFARS cite, see 30.7001-2(e).*

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31.205-10 Cost of Money

31.205-19 Insurance and indemnification.

SUBPART 31.2-CONTRACTS WITH COMMERCIAL ORGANIZATIONS

31.205-7 Contingencies.

(c)(2)(90) When a negotiated fixed price type contract (including indefinite delivery, labor-hour, or time-and-materials contracts) is contemplated, whether to be awarded on a firm-priced or flexibly priced basis (includes economic and award fee bases), the following techniques should be considered to overcome contingencies described in FAR 31.205-7(c)(2) which present a substantial uncertainty and financial risk to the contractor and/or the Government:

(i) Applying a decrement factor for contingencies involving materials (see 15.401);

(ii) Delaying the award so that the contingent effect may reasonably be determined or the contingency resolved, and the contract priced accordingly;

(iii) Using a cost reimbursable type contract;

(iv) Segregating the contingency as a cost reimbursable line; or,

(v) When the contracting officer documents why each of the preceding techniques will not suffice, incorporating a reopener clause in the contract (see Subpart 17.92).

31.205-10 Cost of money.

(a)(1)(ii)(c) For information on the interest rate specified at this FAR cite, see 30.7001-2(e).

31.205-19 Interest and indemnification.

(a)(3)(i) For information on the interest rate specified at this FAR cite, see 30.7001-2(e).

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32.905 Reserved.

32.906 Contract financing payments.

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32.907-1 Late invoice payment.

32.004 Contract performance in foreign countries.

(a) Foreign currencies owned by the U.S. Government shall be used, when feasible, to make payments under contracts in foreign countries. The provisions of DODD 7360.11, Use of Foreign Currencies, will govern.

32.006 Reduction or suspension of contract payments upon finding of fraud.

32.006-1 General.

(b) Level IV of the Executive Schedule is the Under Secretary of Defense (Acquisition and Technology).

32.006-2 Definitions.

(a) DLA's remedy coordination official is the Associate General Counsel, Fraud Remedies Program.

32.006-3 Responsibilities.

(b) Instances of suspected fraud shall be promptly forwarded by the chief of the contracting office to local fraud counsel for appropriate action.

32.006-5 Reporting.

The DLA remedy coordination official shall prepare the report which shall be submitted by memorandum by the Director, DLA or his deputy to the Under Secretary of Defense (Acquisition and Technology) through the Director of Defense Procurement.

32.071 Contract Finance Committee.

(b)(2) Deviations. Requests for authority to deviate from the provisions of FAR Part 32, DFARS Part 232, or Part 32 of this directive shall be submitted to HQ DLA, ATTN: **DLSC-PPB**.

SUBPART 32.3 - LOAN GUARANTEES FOR DEFENSE PRODUCTION

32.304 Procedure.

32.304-1 Application for guarantee.

(a) Any application based on a contract which cites or will cite DLA funds will be transmitted to HQ DLA, ATTN: FO. This address will be used regardless of the office responsible for administration of or payment under the contract.

SUBPART 32.4 - ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

32.407 Interest.(a)(2)(b). For information on the interest rate, see 30.7001-2(e).

(a)(2) and (b). For information on the interest rate specified at these FAR cites, see 30.7001-2(e).

32.409 Contracting officer action.

32.409-1 Recommendation for approval.

The contracting officer's report, containing all the information specified in FAR 32.409-1, shall be forwarded by the chief of the contracting office to HQ DLA, ATTN: FO, with a copy to HQ DLA, ATTN: **DLSC-PPB**. The items indicated in FAR 32.409-1(b) and (c) require submission and investigation of all information cited in FAR 32.408. Information on how advance payments, in lieu of all other financing methods, are necessary for performance of the contract, and how the authorization of advance payment is in the public interest or, as applicable (see FAR 32.402), will facilitate the national defense, shall be included in documentation to be furnished pursuant to FAR 32.409-1(d).

32.409-2 Recommendation for disapproval.

If the contracting officer determines that the request should be disapproved, the determination shall be forwarded for approval by the chief of the contracting office. The response to the contractor should include suggestions as to alternate financing methods. If the contract cites DLA funds, an information copy of the documents should be transmitted to HQ DLA following the distribution cited in 32.409-1 above. (The office administering or making payments under the contracts or maintaining the allotment records to which the payment will finally be charged is not pertinent.)

SUBPART 32.5 - PROGRESS PAYMENTS BASED ON COSTS

32.501 General.

32.501-2 Unusual progress payments.

(a) All unusual progress payments provisions along with supporting information, shall be submitted for coordination and approval to HQ DLA, ATTN: FO, with a copy to HQ DLA, ATTN: **DLSC-PPB**, if the request concerns a contract which cites DLA funds.

32.502 Preaward matters.

32.502-1 Use of customary progress payments.

The use of a progress payments clause in orders with the Federal Prison Industries (FPI) and in orders with the workshops of the National Industries for the Blind (NIB) and the NISH shall be based on the criteria in FAR 32.502-1. These entities shall be afforded the same privileges for and rate of progress payments as are permitted for large business concerns.

32.502-3 Solicitation provisions.

(90) To specify the applicable progress payment rate, a provision substantially as follows shall be included in orders with FPI and the workshops of NIB/NISH that authorize progress payments.

"Paragraph (a) of the clause at DFARS 252.232-7004, DoD Progress Payment Rates, which is hereby incorporated by reference, specifies the progress payment rate applicable to this order."

SUBPART 32.6 - CONTRACT DEBTS

32.610 Demand for payment of contract debt.

(b)(2) For information on the interest rates specified at this FAR cite, see 15.407-1(b)(7)(I) or 30.7001-2(e) as applicable.

32.613 Deferment of collection

(h)(3) and (i) See 32.610 (b)(2).

32.614 Interest.

32.614-1 Interest charges.

(c) For information on the interest rate specified at this FAR cite, see 30.7001-2(a).

32.690 Claims processing.

Follow directions contained in DLAM 7000.1, chapter 12.

SUBPART 32.7 - CONTRACT FUNDING

32.703 Contract funding requirements.

32.703-2 Contracts conditioned upon the availability of funds.

It is recognized that there may be instances, other than those described in FAR 32.703-2, when it may be necessary to initiate a purchase prior to the availability of funds. In such instances, the action will only be taken after the facts concerning the proposed solicitation are presented to HQ DLA, ATTN: **DLSC-PPB**, for review as to the necessity for such action and the obtaining of the required FAR deviation permitting use of the provisions set forth in FAR 52.232-18.

SUBPART 32.9 - PROMPT PAYMENT

32.906 Contract financing payments.

(a) The DFARS 232.906(a) requirement that the contracting officer coordinate payment terms with offices involved in the payment process applies only when a timeframe longer than the normal 7 or 14 day requirements specified in the Prompt Payment clause at FAR 52.232-25(a)(6) and at FAR 52.232-25(b)(2) is used.

32.907 Interest penalties.

32.907-1 late invoice payment.

(d) and (e) For information on the interest rate specified at this FAR cite, see

PART 33

PROTESTS, DISPUTES, AND APPEALS

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33.213	Obligation to continue performance.

SUBPART 33.1 - PROTESTS

33.103 Protests to the agency

(c) All DLA field activities shall provide a protest procedure as an alternative to filing a protest with the contracting officer. The decision maker for such an alternative "agency level" procedure shall be at least one level above the contracting officer. Legal concurrence is required on all agency level protest decisions.

(91) Each activity shall collect information concerning protests filed each fiscal year under the alternative protest procedure. This information shall include the number of protests filed and their disposition, whether or not there was a stay of procurement/award, and the number of any subsequent protests to the General Accounting Office.

DLAD 33.104 -- Protests to GAO

(a) General Procedures.

(90) (i) Headquarters, General Counsel (GC), is the administrative focal point for all DLA protests filed with the General Accounting Office (GAO). Immediately after receiving written notice from GAO of a protest, GC will notify the local office of counsel for the contracting activity involved that a protest has been filed with GAO. The local office of counsel shall promptly assign an attorney to the protest and notify GC and GAO of the name and phone number of the assigned attorney. Field counsel should consult DLA's Bid Protest Procedures Manual for specific procedures regarding protests before GAO.

(90) For local offices that have not been delegated the authority and responsibility to represent DLA in bid protests filed with GAO, GC will notify GAO of the assigned attorney.

(ii) The Chief Counsels of the following offices have been delegated the authority and responsibility to represent DLA in bid protests filed with GAO: DSCC, DESC, DSCR, DSCP, DRMS, DCMD-East and DCMD-West.

(iii) Contracting offices, through their legal staff, shall promptly inform GC of any protests which concern significant or unsettled issues of contracting law, regulation, or policy.

(2) Contracting activities and offices are responsible for providing notice to interested parties in accordance with FAR 3.104(a)(2).

(3) **(90)** Upon receipt of a protest, the Chief Counsel of the field office must ensure that the protest is reviewed for possible corrective action or disposition using Alternative Dispute Resolution (ADR). For protests not resolved through ADR, the Chief Counsels shall ensure appropriate representation by their offices, including preparing and transmitting the documents required by FAR 33.104(a)(3). Letters transmitting agency reports should be signed by the Chief Counsels.

(91) Local offices of counsel that have not been delegated the authority and responsibility to represent DLA in bid protests filed with GAO shall forward the complete report, including all relevant documents, to GC within 20 days after the protest was filed with GAO, unless the circumstances in FAR 33.104(3)(i)(A) or (B) apply. If GAO has invoked the express option, local offices of counsel should contact GC to establish a report due date. Field counsel shall also furnish the names and addresses of any interested parties. GC shall be responsible for submitting the report required by FAR 33.104(a)(3) to GAO, and copies of the report to the protester and other interested parties.

(i) **(B)** Requests for time extensions must first be approved by GC. Field counsel must submit a written request to GAO describing the circumstances requiring a time extension. This written request must be submitted to GAO early enough to permit filing of the report within the original time frame if the request is denied. If a time extension is granted, the field counsel must advise GC that GAO has established a new deadline for the submission of the agency report.

(4) **(i)** Field counsel are also responsible for ensuring that GC receives a copy of the agency report by the day the report is due to GAO.

(90) Local offices of counsel that have not been delegated the authority and responsibility to represent DLA in protests filed with GAO shall delete any information and/or documents described in 33.104(a)(4) and shall identify the information and documents deleted in the cover letter transmitting the report to GC.

(5) **(iv)** If field counsel believes that a party has violated the terms of a protective order, field counsel shall immediately notify GAO and GC.

(6) Field counsel shall promptly forward a copy of any comments received from the protester or any interested party to GC.

(7) The name, title, and telephone number of the senior procurement attorney in GC has been furnished to GAO as the designated DLA contact for protests.

(b) Protests Before Award

(1) If the contracting activity determines to award a contract after receipt of a protest, the head of the contracting activity (HCA), with the concurrence of the local office of counsel, shall make the written finding required by FAR 33.104(b)(1). Field counsel must send a copy of the finding to GC.

(90) Contracting offices for which the Executive Director, Procurement Management is the HCA (see DLAD 2.101) shall submit the proposed finding to GC for concurrence, through their local office of counsel. If concurred in, GC will then forward the proposed finding to the Executive Director, Procurement Management for approval. After the Executive Director, Procurement Management has signed the finding, **DLSC-P** shall notify GC immediately and provide GC a copy of the written determination.

Before the contracting activity authorizes contract award, field counsel shall notify GAO of the finding made under FAR 33.104(b)(1). For contracting offices where the Executive Director, Procurement Management is the HCA, GC will notify GAO of the finding made under FAR 33.104(b)(1).

(c) Protests After Award

(1) For purchase orders, award is considered to be made on the date the purchase order is issued. If a protest is received within 10 days of the date a purchase order is issued, the purchase order should be either suspended or canceled. This determination should be made in conjunction with the local office of counsel.

(2) If the contracting activity decides to continue contract performance pursuant to a written finding by the HCA under FAR 33.104(c)(2), that finding must be made with the concurrence of the local office of counsel. After the HCA has signed the authorization to continue performance, the local office of counsel shall notify GC of the HCA's finding and immediately provide GC a copy.

(90) Contracting offices for which the Executive Director, Procurement Management is the HCA (see DLAD 2.101) shall submit the proposed finding to GC for concurrence, through their local office of counsel. If concurred in, GC will then forward the proposed finding to the Executive Director, Procurement Management for approval. After the Executive Director, Procurement Management has signed the finding, **DLSC-P** shall notify GC immediately and provide GC a copy of the written determination.

(3) Before the contracting activity lifts the stop work order or performance is otherwise continued, field counsel shall notify GAO of the finding made under FAR 33.104(c)(2). For contracting offices where the Executive Director, Procurement Management is the HCA, GC will notify GAO of the finding made under FAR 33.104(c)(2).

(g) Notice to GAO.

(90) When a protest has been sustained, Chief Counsel shall notify GC if the contracting activity or office recommends the agency not follow the Comptroller General's recommendation. A final decision not to follow the Comptroller General's recommendation shall be made by the Executive Director, Procurement Management, with the concurrence of GC. If the Executive Director, Procurement Management determines, with GC concurrence, not to follow the Comptroller General's recommendation, GC shall notify the Chief Counsel in writing of the determination. Chief Counsel shall then submit the report, which must be signed by the HCA in accordance with FAR 33.104(g), within 60 days of receipt of the Comptroller General's decision, to GAO.

(h) Award of costs.

(90) The authority and responsibility for resolving claims for protest costs has been delegated to the Chief Counsels of the following offices: DOCCR, **DESC**, DSCR, **DSCP**, DRMS, **DCMD-East and DCMD-West**. This authority cannot be redelegated. The concurrence of the contracting officer is required on all decisions resolving claims for protest costs.

(91) The authority to resolve protest claims is applicable not only when the Comptroller General issues a decision recommending protests cost be paid, but also when the head of the agency takes corrective action after determining the solicitation, proposed award, or award does not comply with applicable laws and/or regulations. The amount paid, however, is limited by 31 U.S.C. § 3554(c)(2).

(92) Local offices of counsel that have not been delegated the authority to settle claims for protest costs shall forward requests for protest costs, attorneys' fees and/or bid or proposal preparation costs to GC. GC, in consultation with field counsel, will be responsible for disposition of the claim. After settlement of such requests, notice of the costs approved by GC will be sent to field counsel. Field counsels are responsible for ensuring the contracting offices pay the protester.

33.106 Solicitation provision and contract clause.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.233-9000 in all solicitations, **including solicitations for acquisitions of commercial items**.

SUBPART 33.2 - DISPUTES AND APPEALS

33.208(b) For information on the interest rate, see 30.7001-2(a).

33.209 Suspected fraudulent claims.

Referrals of suspected fraudulent claims will be referred to the local office of counsel for reporting to the General Counsel, in accordance with the DFARS 209.406 and DLAD 9.406.

33.212 Contracting officer's duties upon appeal.

The notice of final decision required by FAR 33.011 advises the contractor that it may submit a notice of appeal directly to either the Board of Contract Appeals or the U.S.

Claims Court. When the contracting officer receives a copy of a notice of appeal, all records pertaining to the appeal will be held for review until final resolution. The appeal will then be processed as follows:

(a) Notice of Appeal to the Board of Contract Appeals. Notices of appeal or appeals, if submitted directly to the contracting officer, or responses to appeals if submitted directly to the Board of Contract Appeals, will be presented to the Board of Contract Appeals by the Counsel of the DLA field activity involved. Direct communication with the Board is authorized. The charter and rules of the Boards of Contract Appeals are set forth in the Supplement, Appendix A. All official correspondence to the Board will be addressed to the Recorder, Armed Services Board of Contract Appeals, **Skyline 6, 5109 Leesburg Pike, 7th floor, Falls Church, VA 22041.**

(b) Notice of Appeal to U.S. Claims Court. Notices of appeal filed directly with the U.S. Claims Court will be docketed and forwarded to General Counsel, by the Department of Justice. Upon receipt by General Counsel, of notice that litigation proceedings have been instituted, further notice and instructions shall be furnished to the Counsel for the DLA field activities involved for processing under normal litigation procedures.

33.213 Obligation to continue performance.

(a) When the Alternate I of the clause at FAR 52.233-1, Disputes, is proposed to be used in contracts when permitted by the circumstances described in DFARS 233.214(2), the determination shall be approved by the chief of the contracting office at the DSCs, the Commanders **DDC**, T-ASA, DRMS, DCMDs, and **DCMDI**, the Administrator, DNSC, and **Headquarters Complex Commandant, DASC**. For those DLA activities not designated as a contracting activity (see DFARS 202.1(a)), the determination to use the Alternate I, as provided in DFARS 233.214(3), shall be forwarded to DLA Procurement (**DLSC**-POA) by cover letter signed by the Commander or the Administrator, DNSC, or the **Headquarters Complex Commandant, DASC**, for approval by the Executive Director, Procurement Management. Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons support systems, and related components other than those listed in DFARS 233.214(1), or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

PART 35

RESEARCH AND DEVELOPMENT CONTRACTING

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SUBPART 35.016 - BROAD AGENCY ANNOUNCEMENTS

35.016 General.

35.016 Broad agency announcement.

(a) General. Use of a BAA should be considered when the Government is seeking unique, creative solutions or advances in knowledge, understanding, technology, or the state-of-the-art, and is only able to state its requirements in terms of general areas of need or interest, rather than by means of a common statement of work with specific solutions or outcomes. If supply or service requirements can be adequately described to industry in a statement of work, proposals should be solicited by an invitation for bids or request for proposals.

(1) Provide the maximum practicable opportunity for participation in the acquisition process by small business/small disadvantaged business concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs). Normal set-aside policies and procedures apply. More specific guidance is provided at DFARS 205.207, 226.70, and 235.016.

PART 37

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Requirements for services of grievance examiners/EEO investigators shall be satisfied by the most appropriate FAR/DFARS prescribed contracting procedure. The contracting officer shall be responsible for selection of the contracting procedure and for administration of the resulting contract(s). Small purchase contracts for these services shall be placed only with sources identified in the qualified pool of estimators/examiners list maintained by the HQ DLA Office of Equal Employment Opportunity (CAAH), Defense Switched Network (DSN) 284-7192. Contracting officers shall contact (CAAH) to obtain a current required source list for soliciting in accordance with FAR 13.106 procedures.

PART 39

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PART 39

ACQUISITION OF INFORMATION *TECHNOLOGY*

39.000 *Scope.*

This subpart prescribes interim policies and procedures for the acquisition of Information Technology (IT) and Telecommunications.

39.101 *Policy.*

To the greatest extent possible, acquisitions for IT and Telecommunications should be treated as any other acquisition and unique requirements should be kept to a minimum.

39.900 *Procedures for IT procurement.*

(a) Contracts for IT may be awarded by DLA contracting offices other than DASC-C under the following conditions:

1. The total value of the contract (including options) does not exceed \$500,000;

2. The contract will occur by placing an order not exceeding \$500,000 against a GSA schedule contract;

3. The contract will occur by placing a delivery order against an applicable HQ DLA or joint service indefinite quantity or requirements contract (as authorized by the contract), except for items for the mid-tier. Mid-tier refers to those machines that fall in the range between the work station and the mainframe. Examples of their uses include, but are not limited to, client servers, network controllers, process controllers, and dedicated single application processors. All mid-tier requirements must be submitted to DSDC-TB for technical coordination with the appropriate DSDC offices prior to submission to DASC-CA. DASC-CA will acquire the initial maintenance requirements in support of mid-tier requirements. However, all follow-on maintenance in support of mid-tier equipment may be acquired by the contracting office supporting the DLA activity; or

4. The contract is for IT supplies, training, or subscriptions (excluding software operating or application systems).

(b) Acquisitions in excess of the established thresholds shall be submitted to the Chief Information Officer Customer Support (CIC) office to: review the package for compliance with current DLA technical initiatives and policies; coordinate the package with the appropriate business office; and forward the package to DASC-CA for procurement.

(c) All requests for use of the Defense Information Systems Agency (DISA) Defense Enterprise Integration Services (DEIS II) contracts shall be submitted to CIC, unless otherwise authorized in writing by the DLA Chief Information Officer (CIO). Use of other multi agency and government-wide agency contracts (GWACs) for IT supplies or IT support services shall be processed through CIC, unless otherwise authorized by the DLA CIO.

(d) Prior to acquiring IT supplies or IT support services from a multi agency contract, the requesting activity shall comply with FAR Subpart 17.5, Interagency Acquisitions Under the Economy Act (EA). If an EA determination is required, it shall be submitted to CIC with the request to use a multi agency contract. Prior to approving the

use of a multi agency contract, CIC shall submit the EA determination to DASC-C for review and action.

(e) All requirements to be acquired under the GSA Federal Systems Integration and Management (FEDSIM) Program shall be staffed through CIC for informational purposes and investment accountability by the CIO.

39.901 Documentation requirements for IT procurement.

(a) The following documentation will be forwarded to the contracting office to be included in the contract file.

1. Documentation for acquisitions valued below \$100,000 shall be in accordance with local procedures, or as appropriate for the complexity of the requirement.

2. Documentation for acquisitions valued between \$100,000 and \$500,000 require a modified justification. The following information shall be provided in a justification for an acquisition in this dollar range.

(i) A paragraph or less describing why the IT is needed and the program/project/ Automated Information System (AIS) being supported by the IT.

(ii) A description of what is being acquired, such as hardware or software, etc. Identify the product, model number, version number, quantity, unit cost and any other attributes such as essential physical characteristics. For support services include a Statement of Work.

(iii) Delivery information: Must include the exact location and point of contact with commercial and DSN telephone numbers. Example:

Defense Logistics Agency (DLA)
8725 John Kingman Road
Pod B. Room 1246
Fort Belvoir, VA 22060
POC: Jane Doe, Commercial (703)767-1234, DSN 427-1234

(iv) Sources: Attach a copy of the market survey for each recommended source.

(v) Funding Document.

(vi) For sole source (only one source, specific make or model or compatibility-limited) attach appropriate Justification for Other than Full and Open Competition.

(vii) Other: Any miscellaneous information.

(b) Documentation in the form of a Requirements Analysis (RA) and an Analysis of Alternatives (AA) shall be prepared and submitted to the contracting office for inclusion in the contract file for acquisitions exceeding \$500,000.

1. A Requirements Analysis is a prerequisite to the acquisition of IT, which provides the basis for an AA for meeting the stated requirements, and it should be commensurate with the dollar value and complexity of the procurement. A Requirements Analysis should address the following elements in support of the requirement: information needs, system life, description of requirements, compatibility-limited requirements, justification of specific make and model (if applicable), security requirements, accessibility requirements for individuals with disabilities, space and environmental requirements, workload and related requirements, and record management requirements.

2. An Analysis of Alternatives is conducted after the completion of the RA and compares and evaluates various alternatives for meeting the requirements and to determine which alternative is the most advantageous to the Government. The AA should be commensurate with dollar value and complexity of the results from the RA. The AA should consider the following: the results of the market research, use of GSA's IT programs, IT available for reuse, use of existing IT on a shared basis, cost for each alternative, conversion costs, benefits (quantifiable/nonquantifiable), and obsolescence.

(c) Acquisitions valued between \$500,000 and \$1,000,000 shall be supported by an RA and an AA that demonstrates that the benefits of the acquisition exceed the cost.

(d) Acquisitions in excess of \$1,000,000 shall be supported by an RA and an AA. The AA must calculate the total estimated costs using net present value for each of the possible alternatives.

39.902 Telecommunications equipment and services.

(a) Telecommunications equipment and services meet the definition of information technology.

(b) Contracts for telecommunications equipment and services may be awarded by DLA contracting offices other than DASC-C under the following conditions:

1. The contract will occur by placing an order not exceeding \$500,000 utilizing the GSA Purchase of Telecommunications & Services (POTS) type contracts.

2. The total value of the procurement (including options) does not exceed \$500,000.

(c) Acquisitions for telecommunications equipment and services in excess of the thresholds in (b) above shall be submitted to CIC who will: review the package for compliance with current DLA technical initiatives and policies; coordinate the package with the appropriate business office; and forward the package to DASC-CA for procurement.

(d) Communication Services Authorities (CSAs) shall only be signed by contracting officers.

39.106 Year 2000 compliance (Y2K).

(a) (90) All solicitations and contracts for non-IT items (non-IT items are those items that contain embedded microcircuit chips with a clock mechanism, timing device, or control device) that are required to perform date/time processing involving dates subsequent to December 31, 1999, shall require the deliverables to be Year 2000 compliant or be upgraded to Y2K compliant.

(91) Orders for IT shall not be placed against a contract or other acquisition instrument unless the contract instrument requires Y2K compliance or the order itself requires Y2K compliance.

(92) The contracting officer shall use the definition of Year 2000 Compliant at FAR 39.002 in all solicitations and contracts to describe the Y2K compliance requirement. The definition language should be included in Section C, Description/specification/work statement of the solicitation and contract, and therefore would not require a separate clause to enforce the requirement.

(93) Exception or waiver requests to Y2K compliance must be approved by the DoD Chief Information Officer (DoD CIO). All requests for exception or waiver shall be submitted to the DLA CIO for review and approval prior to submission to the DoD CIO. The exception or waiver request must be supported with a written commitment from the contractor to provide the Y2K enhancement by a specific date in the future, no later than December 31, 1999.

(94) Contracting officers should consider requiring testing for Y2K compliance based on the complexity of the IT requirement. Testing procedures should allow for a representative sampling of the IT delivered to be tested for Y2K compliance and the results should be documented in writing, either by the supplier or the acquiring activity.

PART 42

CONTRACT ADMINISTRATION

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SUBPART 42.2 - ASSIGNMENT OF CONTRACT ADMINISTRATION

42.202 Assignment of contract administration.

(a)(2)(90) When, in the contracting officer's judgment, a contract or order requires special attention by a field CAO that cannot be adequately conveyed by a criticality designator, this need will be communicated in writing by the contracting officer to the ACO. Drawing the attention of field CAOs to special contracting officer area(s) of concern should normally be accomplished during the assignment process, or as soon as possible thereafter. (See (a)(2)(92) below.)

(a)(2)(91) Contracting officers shall provide a complete purchase history to the CAO with the delegation of all unpriced orders for definitization.

(a)(2)(92) The letter of delegation required by (a)(90) **below** will state that the award is the first to the SDB (or the first for the item being procured) and request that a postaward orientation conference be conducted in accordance with FAR Subpart 42.5, Postaward Orientation (see especially FAR 42.501(b)). The letter should highlight any specific areas the contracting officer believes should be covered in the conference. It should also indicate that a letter or other form of written communication can be utilized in lieu of a postaward conference, provided that a copy is furnished to the contracting officer, and the CAO has performed a recent postaward conference with the SDB.

(a)(90) When a contracting activity makes an award having a dollar value of \$25,000 or more to a small disadvantaged business (SDB), whether for the first time or for an item not previously purchased from the SDB, the award will be assigned for administration to the appropriate contract administration office (CAO).

(91) To implement the direction of the Secretary of Defense, December 6, 1995, and the Under Secretary of Defense (Acquisition and Technology), December 8, 1995, concerning single process/block changes, such changes to technical or management requirements in DoD contracts shall be accomplished as follows:

(1) When a contractor volunteers to participate in the single process initiative, the ACO shall organize a management council consisting of CAO, DCAA, key DoD customers (notionally defined as those representing 80% of the total dollar value of affected DoD contracts at the contractor's facility), and contractor personnel to perform an initial review of the adequacy and reasonableness of the contractor's single process concept with regard to that facility. Technical feasibility (including the impact on quality, maintenance, schedule, etc.), cost effectiveness, and program risk will be addressed during the council's preliminary review. A "rough order of magnitude" cost-benefit analysis will then be performed, sufficient to permit a determination whether the

proposed changes can be approved, and contracts modified, on a no-cost, block change basis. The formal, single process proposal shall be reviewed and approved by the management council prior to the issuance of block modifications to existing contracts by the ACO.

(2) When DLA has contracts at a contractor's facility where a single process proposal has been submitted by the contractor, the following procedure shall be followed:

(i) If an ICP has a sufficient dollar value of contracts to warrant its participation as a key customer in the management council established to review single process proposals at a contractor's facility, or if its participation in the management council is otherwise considered necessary and appropriate, the ACO shall request, and the ICP shall designate, in writing, an individual to serve as its representative on the management council. The representative shall be a senior member of the acquisition workforce. The ICP's management council representative shall be empowered to speak on behalf of the ICP's contracting officers having cognizance of affected contracts. He/she shall request assistance, as necessary, from technical and other subject matter experts whenever a concept paper or proposal is submitted.

(ii) Each ICP shall also designate, in writing, a senior member of its acquisition workforce as its team leader for single process initiative issues ("SPI team leader"). In the absence of ICP representation on the management council, the SPI team leader shall be responsible for reviewing and making recommendations on the acceptability of concept papers or proposals referred to the ICP by the ACO. (This will typically occur when there are contracts with one or more DLA ICPs at the affected facility, but the Agency is not considered a "key customer," as defined above.) The SPI team leader shall be presumed to provide a coordinated delegation of authority for effecting block changes to the applicable DCMC component from cognizant contracting officers. Additionally, he/she may consult, as necessary, with appropriate technical and other subject matter experts prior to providing the ICP's concurrence with the proposed single process change. The SPI team leader shall be authorized to resolve disputes among that activity's contracting officers regarding concurrences/nonconcurrences with concept papers or proposals.

(iii) If an ICP has the largest total dollar value of, but not the only, DLA contracts with a contractor submitting a concept paper or proposal, its management council representative (or, if the ICP has no representation on the management council, its SPI team leader) will be considered the DLA component team leader with regard to the process proposal. He/she must brief, solicit recommendations from, and achieve consensus with the other affected ICPs' SPI team leaders on the acceptability of the single process concept and proposal. This individual shall then speak on behalf of the entire Agency. When consensus cannot be reached between and among the affected ICPs, disagreements shall be elevated by the DLA component team leader, and shall be resolved by **DLSC-P**.

(iv) Notwithstanding that the single initiative/block change process is strongly supported at the highest levels of DoD, appointment of a DLA component team leader, ICP SPI team leader or ICP management council representative does not relieve the contracting officer of accountability for programs and contracts under his/her cognizance. Therefore, a contracting officer may appeal to **DLSC-P** any single process proposal decision he/she considers antithetical to the Government's best interests, and, if necessary, may carry that appeal through **DLSC-P** to the Defense Acquisition Executive or designee.

(c)(90) Responsibility for negotiation and execution of modifications to definitize undefinitized BOA orders or unpriced purchase orders shall not be delegated by the contracting office when a ceiling unit price is 125 percent or more of the lowest price paid within the 12 months preceding the effective date of the undefinitized BOA order or unpriced purchase order.

(e)(90) When contracts containing the Small Business, Small Disadvantaged Business and Women-owned Small Business Concerns Subcontracting Plan clauses are retained for contract administration by the contracting office, the contracting office shall request support from the cognizant CAO to administer the program imposed by these clauses. Section C of these contracts shall contain a statement substantially as follows: "The Small Business, Small Disadvantaged Business and Women-owned Small Business Concerns Subcontracting Plan clauses in this contract will be administered by the cognizant Contract Administration Office." (Note: Assignment for supporting administration will be made to the cognizant CAO of the geographical area in which the prime contractor is located.) Three copies of the contract and the Small Business, Small Disadvantaged Business and Women-owned Small Business Subcontracting Plan shall be forwarded to the cognizant CAO with a request for supporting contract administration of these clauses in accordance with FAR 42.202(e) and

DFARS 242.204. The CAO will monitor the prime contractor's small business, small disadvantaged business, and women-owned small business concerns subcontracting programs and accomplish the periodic reviews required by FAR 42.302(a)(55).

(e)(91) When assignments of supporting contract administration are made to a field CAO under the administrative retention provisions of DFARS 242.203(a)(i) for either contracts and orders subject to a Master Solicitation Agreement, or large purchase awards that are not subject to a Master Solicitation Agreement, the following otherwise-optional functions should be delegated:

CANCELLATIONS - Modifications to cancel contract line item numbers (CLINs) not shipped, when requested by the contracting officer.

DIVERSIONS - Modifications effecting diversion when notice from the contracting officer provides shipping instructions.

EXCUSABLE DELAYS (e.g., strikes, floods, etc.) - Modifications to extend delivery date when delinquencies will result because of excusable delays.

NONEXCUSABLE DELAYS - Modifications, to revise delivery time up to 90 days, issued for consideration.

42.203 Retention of contract administration.

(a)(i)(90) **DESC** may retain administration of contracts for coal or bulk petroleum.

(90) If the contracting officer retains administration of a contract or order and a need subsequently arises to delegate any aspect of contract administration to a CAO, the contract or order shall be assigned for performance of all contract administration functions, except as stated in paragraph 42.204 above.

42.205 Designation of the paying office.

(2) All contracts assigned to a Service Plant Cognizance Representative for administration shall designate the disbursing office supporting the contracting office as disbursing office for the contract except for contracts resulting from MIPRs, which shall cite the disbursing office in accordance with DLAR 4115.3, Implementing Procedures for Purchase of Supplies Assigned to DLA Under the DoD Coordinated Procurement Program, paragraph (VI)(A)(13).

SUBPART 42.3 - CONTRACT ADMINISTRATION OFFICE FUNCTIONS

42.302 Contract administration functions.

(b)(2) See 42.202(c)(90).

(b)(7) The authority to negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause should be delegated to the contract administration office except in exceptional circumstances. If a decision is made to retain this function in the contracting office, the reason for retention shall be documented.

SUBPART 42.11 - PRODUCTION SURVEILLANCE AND REPORTING

42.1103 Policy.

(90) For all contracts that involve a Shift to Commercial Practice or other change in the method of customer support (i.e., including corporate contracts, prime vendor and virtual prime vendor contracts), the DLA contracting office shall monitor contractor performance (price, delivery, etc.) to assure a satisfactory level of performance is achieved and maintained and is consistent with the planned levels throughout the contract period, including options.

42.1106 Reporting requirements.

(a) Submission of DD Form 375, Production Progress Report, will be required under the following circumstances, as a minimum:

- (i) Items required to satisfy requisitions bearing UMMIPS priority 01 through 06.
- (ii) Items that have been designated by the DSC Commanders as being in a critical supply position.
- (iii) Items on the DoD, Military Service, or DLA critical list.
- (iv) Items in direct support of the DoD Master Urgency List (MUL) categories.
- (v) Contractors on the Military Services Contractor Experience Lists.
- (vi) When requested by the DoD Project Manager.

42.1190 Contract acceleration/status requests.

Procurement personnel will initiate contract acceleration/status requests to contractors and CAOs as appropriate. However, to facilitate the handling of special-emphasis and high-priority items, Centers may, at their option, establish local procedures which will permit supply personnel to initiate contract acceleration/status requests to cognizant CAOs. Those Centers using this option must assure that local procedures are jointly developed and contain the following controls and provisions [note: subparagraphs (i) through (v), below, do not pertain to commodity business units or similar structures]:

- (i) Strong prohibitions against supply personnel contacting contractors directly.
- (ii) Strict controls to preclude identical requests for the same items being sent by supply and procurement personnel to CAOs.
- (iii) A procedure whereby information obtained by supply personnel from the cognizant CAO is provided to procurement personnel for updating the active contract file.
- (iv) Direct communications between supply personnel and CAOs shall normally be by letter or message. Under the most urgent circumstances (UMMIPS priorities 01 thru 03), telephone requests for acceleration/status are permitted after supply personnel determine that procurement personnel are not working the same item. Telephone requests from supply personnel for contract acceleration will be immediately followed by confirming documentation to cognizant CAOs.
- (v) Requests for contract acceleration/status will be made as infrequently as possible and will specify, at a minimum, contract number, contractor, and location. Contract acceleration requests should not take the place of effective, up front acquisition planning. In addition, such requests shall contain sufficient information to convey the urgency of the circumstances and minimum quantities needed to satisfy high-priority requisitions or backorders.

SUBPART 42.71 - VOLUNTARY REFUNDS

42.7101 Solicited refunds.

(90) Overpricing.

(1) Before any recoupment action is taken, the contractor shall be contacted for any explanation of the basis of its price, and whether a pricing error has occurred. A determination shall then be made as to the existence of overpricing.

(2) If it is determined that overpricing has occurred, the contract should be canceled or a price reduction/voluntary refund requested, as applicable. Voluntary refund requests of \$25,000 or more shall be approved by the chief of the contracting office (CCO). This approval may be delegated at DSCs to one level below the CCO, and if the amount to be requested does not exceed \$50,000, to the chief of the pricing element and to a level no lower than the level above the contracting officer. The Refund requests with supporting rationale should be made in writing to an appropriate contractor official, and should include amounts related to any previous awards by the contracting office for the item for which a voluntary refund is also requested. Awards to other suppliers of the same item should also be reviewed for apparent overpricing, and any appropriate corrective action pursued in accordance with DFARS 242.71 and this subpart. Apparent overpricing on any award made by any other contracting office should be referred thereto for resolution.

(3) In the event efforts to secure a voluntary refund are unsuccessful, the decision concerning further recoupment efforts shall be referred to the approving official cited in (2), above.

(91) Nonconformance. Voluntary refunds for contractor-caused nonconformances discovered after Government acceptance shall be handled in accordance with procedures set forth in 46.407(f)(92) through (95).

42.7102 Disposition of voluntary refunds.

(90) Overpricing. The contract shall be modified, canceled, or terminated, or a voluntary or contractual refund request issued, as appropriate. The price recorded in the Contract Technical Data File shall be revised to reflect the price reduction, or the recoupment, and advice of corrective actions initiated or completed shall be forwarded to the Center Comptroller with a request for immediate revision of the standard price, if applicable. This section does not apply to voluntary refunds for contractor-caused nonconformances.

PART 43

CONTRACT MODIFICATIONS

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SUBPART 43.1 - GENERAL

43.102 Policy.

- (b)(90) See 17.74 when issuing a UCA.

43.103 Types of contract modifications.

- (a) Bilateral.

- (90) Delivery schedule extension - modifications.

(1)(i) It is the Government's express expectation that contractors will make all deliveries in accordance with contractual terms. It is, therefore, DLA's policy neither to endorse nor condone delivery extensions for the convenience of the contractor. There are times, however, (as, for example, when we deal with sole source suppliers, or when our supply position for a particular item will not permit the time and effort necessary for termination and reprocurement) when contracting officers determine that extending a delivery schedule at the contractor's request via contract modification is in the Government's best interest. At those times, they must decide on the form of consideration that is most acceptable under the circumstances. Often, the most appropriate form of consideration is a monetary adjustment to the contractual total. When this is so, the contracting officer/administrative contracting officer for items managed by DSCC, **DSCP**, or DSCR is strongly urged to use the following guidance. (**DESC** is not included because, in general, delays in delivery of the items it manages are governed by demurrage procedures.)

(ii) For supply contracts other than for direct vendor delivery or base support, contracting officers at the centers listed above are encouraged to use the calculation provided at (2), below, when a delivery schedule has to be extended for monetary consideration due to contractor-caused delay. The result should be used as a guide in determining the amount of consideration to assess the contractor for a contractor-requested delivery extension/delay.

(2) As a consequence of the Government's cost incurrence associated with a contractor's delinquent delivery, the following formula will generally be used to determine the basis for an adequate amount of consideration for a delivery schedule extension when that schedule is extended as a result of contractor caused delay:

$$\text{Amount of consideration} = D + [R * L * V]$$

Where - D = Direct costs for the particular supply center, as detailed in DLA- DORRA Report entitled "Cost of Late Contract Delivery Update" **April 1998** ("the Report");

..	DSCC (Construction)	= \$ 76
	DSCC (Electronics)	= \$ 76
	DSCR (General)	= \$ 73
	DSCP (C & T)	= \$ 175
	DSCP (Medical)	= \$ 115
	DSCP (Subsistence)	= \$ 85
..	DSCP (Industrial)	= \$ 84
..	Contracts Administered by:	
..	DCMC	= \$ 291

R = Day/Cost ratio (*the cost per day of lateness of additional inventory resulting from increased production lead time triggered by late delivery* expressed as a proportion of overall contract cost) for the particular supply center, as follows (see details in the Report):

<i>DSCC (Construction)</i>	<i>= .00118</i>
<i>DSCC (Electronics)</i>	<i>= .00256</i>
<i>DSCR (General)</i>	<i>= .00079</i>
<i>DSCP (Industrial)</i>	<i>= .00077</i>
<i>DSCP (C & T)</i>	<i>= .00017</i>
<i>DSCP (Medical)</i>	<i>= .00004</i>
<i>DSCP (Subsistence)</i>	<i>= .00017</i>

L = Total number of days the delivery Schedule is extended;

V = Dollar Value of the extended portion of the contract.

Step One: Multiply the total number of days the contract delivery schedule is being extended by the "Day-Cost Ratio" for the appropriate Center.

Step Two: Multiply the result from step one, above, by the contract dollar amount of the supplies being extended. This is the total variable cost component for delinquent delivery.

Step Three: Add the direct cost to the DLA Component of the delinquent delivery (the \$100 in the formula) to the result of step two. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the extension.

(3) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "current status." In such situations (and assuming demand for performance or explanation of delinquency has been made in writing to the contractor), it is preferable to leave the contract in a delinquent status than to modify it for an insignificant amount, or at no cost to the contractor. Refusing to restore the contractor to a satisfactory status in the event of its failure to make a good-faith offer of adequate consideration permits the Government to maintain a record of the delinquency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(91) Modifications for waivers and deviations are discussed at 46.407(f)(91).

SUBPART 43.2 - CHANGE ORDERS

43.201 General.

(90) The requirements of DFARS 217.74 and DLAD 17.74 shall be met when an undefinitized change order (UCO) which involves a Government directed change to the design/manufacturing drawings or specifications is issued by a DLA contracting office.

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45.000 Scope of Part.

This part is also applicable to those items for which the rotational/storage stock concept is used to maintain a sufficient quantity of items with short shelf life needed for wartime requirements. Rotational stocks should be considered government property (GP) and the appropriate GP clauses prescribed in this part should be incorporated to ensure that the stocks are properly maintained and accounted for by the contractor. Specific or unique requirements over and above those contained the GP clauses, such as a provision for acceptable replenishment rates, should be spelled out in the statement of work for the contract.

SUBPART 45.1 - GENERAL

45.102 Policy.

(90) It is DLA policy to rely on the private sector to furnish all the production equipment needed to produce the contracted item. Where property is unique to the production of an item and it is not economical for contractors to own such equipment, DLA may be required to acquire and retain this production equipment.

(a) Government property (GP) associated with the production of end items being assigned to DLA for management under the consumable item transfer (CIT) should be identified, located, moved to DLA-controlled storage, and entered into an accountable property record to assure availability for production when needed. For that property in the hands of contractors, steps should also be taken to ensure proper accountability of the property.

(b) Property will be retained in the DLA Industrial Equipment Reserve (DLAIER) to meet current and future production requirements and will be disposed of when no longer justified. Retention of DLAIER equipment will require a biennial certification. Detailed guidance and procedures on management of GP are contained in DLAI 4215.4, Acquisition and Management of Industrial Resources.

45.103 Responsibility and liability for Government property.

(90) Management of property associated with CIT.

(a) Each Supply Center that has GP will establish a property focal point who will:

(1) Verify the location, quantity, type, and condition of property being transferred to DLA. DCMC personnel can be used to assist in this process.

(2) Work with supply management and technical and logistics services to develop the identifying number (NSN, local stock number, part number) that will be used in the official system to account for GP.

(b) Supply management personnel are responsible for storage and accountability of GP.

(91) Management of property in DLAIER.

(a) The property focal point will:

(1) Ensure that a copy of the record for each set/piece of equipment under the Center's cognizance is available for authorizing its use on contracts as needed.

(2) Provide verification of availability and authorization to use equipment to contracting officers.

(3) Review the items in the DLAIER for continued retention or disposal. If continued retention is required, a biennial certification should be prepared for those items at the end of each even FY in accordance with the retention criteria in DLAI 4215.4.

(b) Supply management personnel are responsible for storage and accountability functions for GP.

45.105 Records of Government property.

(90) The property focal point will document additions and deletions to the DLAIER of idle and active equipment to ensure availability of this information and serve as the basis for the biennial certification signed by the chief of the contracting office.

(91) The supply management function will maintain the accountable inventory record of property under a Center's cognizance and report the property into DLA's accountable record.

SUBPART 45.2 - COMPETITIVE ADVANTAGE

45.205 Solicitation requirements.

(b) The preferable evaluation procedure is to use rental equivalents and authorize rent-free use of GFP because the resulting award price will be lower. This conserves DLA's funds because rental monies flow back into the U.S. Treasury at the expense of the DLA budget. Charging the contractor rent shall be used only when absolutely necessary.

SUBPART 45.3 - PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS

45.302 Providing facilities.

45.302-1 Policy.

(a) Maximum reliance shall be placed on the use of contractor-owned facilities to support current production requirements for DLA-managed items. If the Government authorizes the contractor to acquire facilities for the account of the Government, no fee or profit will be allowed, regardless of the type of contract used to reimburse the contractor for the cost of the facilities. This policy does not apply to the acquisition of general purpose components of special tooling or special test equipment.

(4) Requests for new facilities will be forwarded to HQ DLA, ATTN: **DLSC**-PON, for approval by the Executive Director, Procurement Management. Sufficient documentation shall be provided with the request to show that the need for supplies or services cannot be met by any other practical means or that the furnishing of facilities will be in the public interest. A copy of the contractor's written statement, expressing its unwillingness or financial inability to acquire the necessary facilities with its

resources, shall be included as a part of requests for new facilities. In addition to a contractor's statement of inability or unwillingness to own facilities essential to contract performance, the following certification must be made by a contracting official at least one level above the contracting officer:

(90) That private financing of individual facilities was sought but was not available or that private financing was determined not to be advantageous to the Government.

(91) That the defense contract cannot be accomplished without Government-owned industrial facilities being provided. This requirement for certification applies to new facilities or existing facilities and to extending the authorized period of use. The original of the certification shall be included in the contract file and copies retained in a central office for oversight review. The certification will be included in the request for approval to acquire facilities or to provide existing facilities.

(c) When determination is made that solicitations should include an offer to furnish existing Government facilities because adequate price competition cannot be otherwise obtained, the case will be fully documented to indicate the basis for such determination.

45.306(90) *Providing* special tooling.

Criteria for acquisition. When the contracting officer receives notice of the contractor's intent to acquire or fabricate special tooling, the contracting officer will, before agreeing to the classification and approval for payment of the property as special tooling, obtain a written determination from a Defense Contract Management Command (DCMC) representative that the property is needed and properly classified. The written determination by the DCMC technical evaluator will be included in the contract file.

45.307-2 Acquiring special test equipment.

(b) Notice and approval. When the contracting officer receives notice of the contractor's intent to acquire or fabricate special test equipment, the contracting officer will, before permitting contractor acquisition or fabrication of the equipment as special test equipment, obtain a written determination from a DCMC representative that the property is needed and properly classified. The written determination by the DCMC technical evaluator will be included in the contract file.

SUBPART 45.4 - CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

45.407 Non-Government use of plant equipment.

(a)(i) Authority to approve non-Government use of metalworking machinery exceeding 25 percent is delegated to the Heads of the contracting activities (HCAs) without power of redelegation. All other contracting offices for which the Executive Director, Procurement Management serves as HCA, shall forward requests for approval to HQ DLA (*DLSC*-PON).

SUBPART 45.6 - REPORTING, REDISTRIBUTION, AND DISPOSAL OF CONTRACTOR INVENTORY

45.608 Screening of contractor inventory.

45.608-1 General.

(a) Approval to transfer GP to a DLA contract must be based upon known requirements under the gaining contract or other appropriate justification. Approval for transfer, and the justification upon which it is based, will be placed in the contract file of the gaining contract. The justification will specify the consideration the Government will receive for transfer of the property. If there is no known use for the property under an existing contract, but there is adequate justification and approval for retention of the property, the property shall be transferred to a facilities contract or directly funded storage agreement. Approvals for transfer and the justification upon which the approval is based shall be placed in the file of the gaining contract/agreement. The approval must be at a level above the contracting officer. Property which does not meet this criteria for transfer to another contract will continue to be screened through the plant clearance process. For each item transferred, the contracting officer will include the following descriptive data in the contract to which the items are transferred:

Category of Property (facilities, special tooling, special test equipment, material, and agency-peculiar property).

National Stock Number (NSN) and Part Number (P/N), or P/N if NSN is not assigned.

Noun.

Acquisition Cost.

Condition Code.

Age, if known.

45.612 Removal and storage.

45.612-3 Special storage at the Government's expense.

(b) Storage of GP for which there is not a known contract requirement will be separately priced and directly funded by the DLA contracting office benefiting from the storage. Storage will not be charged to indirect costs to be paid by the Government. Retention plans will be prepared for storage of inactive property. Retention plans will provide a detailed description of the property requiring storage, storage cost, location, planned period of storage, and source of funds for storage. Retention plans will be submitted to HQ DLA, ATTN: **DLSC**-PON.

(90) The use of no cost or no direct cost storage agreements is prohibited. Individual activities justifying retention of the property are responsible for funding storage agreements. Consideration of storage costs should be included in retention/disposition decisions.

PART 46

QUALITY ASSURANCE

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SUBPART 46.1 - GENERAL

46.101 Definitions.

Nonconformance. A departure from the requirements specified in the contract, specification, drawing, or other approved product description.

Nonconforming Material. Any item, part, or product with one or more characteristics which depart from the requirements in the contract, specification, drawing, or other approved product description.

Deviation. A written authorization, granted after contract award and prior to manufacture of an item, to depart from a particular performance or design requirement of a contract, specification, or referenced document, for a specific number of units or specific period of time.

Waiver. A written authorization granted after contract award to accept a configuration item or other designated item which, during production or after having been submitted for inspection, is found to depart from specified requirements, but nevertheless is considered suitable for use "as is" or after repair by an approved method.

Request for Deviation. The formal document submitted by the contractor to the Government for the purpose of requesting departure from a specific performance or design requirement of a contract, specification, or referenced document.

Request for Waiver. The formal document submitted by the contractor to the Government for the purpose of requesting acceptance of designated nonconforming supplies or services.

Latent defect. One which cannot be ascertained from a reasonable inspection; not readily discernible.

Nonvoluntary recoupment. A recoupment which the contractor is legally and contractually obligated to provide; recompense that the Government can demand from the contractor.

Patent defect. One which is ascertainable from a reasonable inspection at time of acceptance.

Voluntary recoupment. Recompense provided voluntarily by the contractor for defects deemed to be contractor-caused. (The Government cannot demand reimbursement for patent defects discovered after acceptance, because acceptance is conclusive except for latent defects, fraud, gross mistake, warranted items, and the like.)

46.102-90 Consideration of quality in contractual decision-making.

The Government shall consider the use of:

(a) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(b) Incentive fee arrangements for achieving quality goals;

(c) Reduced Government surveillance when contractor's quality performance so indicates; and

(d) Other noncontractual motivation techniques.

46.103 Contracting office responsibilities.

(b) Contracting personnel shall incorporate quality assurance requirements communicated to them by the local quality assurance personnel in solicitations and contracts. In the event a change to any of these requirements is determined to be in the best interest of the Government, contracting personnel will coordinate with the quality element before changing the requirements. Justification for such a change shall be documented in the official contract file or be clearly prescribed in coordinated local procedures. For example, a local procedure may specify that the contracting element can unilaterally change the place of inspection from destination to source, whereas source inspection cannot be changed to destination inspection without referring the matter to the quality element for coordination.

(c) With few exceptions, the activity responsible for technical requirements (e.g., specifications, drawings, and standards) is the applicable military component. The quality/technical element at the DLA buying activity, or the functional expert within the Commodity Business Unit (CBU) (or similar structure), is responsible for receiving these requirements from the Services and transmitting or preparing applicable inspection instructions to the DSC contracting officer for inclusion in contracts.

(90) [RESERVED]

(91) Contract Data Package Recommendation/Deficiency Report (DD Form 1716).

(1) Chiefs of contracting offices will designate a single control point with the responsibility to receive, analyze, maintain control, and assure timely resolution of recommended changes to Contract Data Package(s) (CDPs).

(2) Recommended improvements/reported deficiencies in CDPs are usually submitted on DD Form 1716, Contract Data Package Recommendation/Deficiency Report, but may be received via messages or letter, which are to be processed as though they were submitted on a DD Form 1716.

(3)(i) DD Forms 1716 will be logged in by the control point. The log will contain, as a minimum, the following information:

(A) Date logged in;

(B) Control number assigned by submitting activity;

- (C) Contracting officer assigned;
 - (D) Submitting activity;
 - (E) Originator's required suspense;
 - (F) Category of CDP problem;
 - (G) Date required actions completed;
 - (H) Date logged out.
- (ii) The control point will establish a suspense date based on the priority noted in box 5, DD Form 1716.
- (iii) The DD Form 1716 will be forwarded for evaluation to the contracting officer having cognizance over the affected contract.
- (4) (i) The contracting officer will refer the DD Form 1716 to other technical areas if additional expertise is required. The contracting officer is also responsible for coordination with the technical operations element if contact is required with Service users, engineering support activities (ESAs), or specification preparing activities.
- (ii) If it is determined that the recommended improvement/reported deficiency is significant, and delivery and payment have not been completed, action will be taken to modify the current contract. If the recommended improvement/ reported deficiency is insignificant, action will be taken only on future contracts.
- (iii) When requested by the submitter of the DD Form 1716, the contracting officer will furnish a reply which states the action to be taken or the rationale for no action. When actions cannot be completed by the suspense date established in accordance with subparagraph (3)(ii) above, the contracting officer will use a DLA Form 65-R (Notification Form), or equivalent, to notify both the submitter and the control point of the revised completion date.
- (iv) When all appropriate actions have been completed, the contracting officer will return the completed DD Form 1716 and any necessary documentation to the control point.
- (5) The control point will review the completed DD Form 1716 package to determine if all required actions have been completed and if the corrective action developed, or justification for continuing existing requirements, is appropriate. If the response is determined to be appropriate, the log will be so annotated; if additional actions are required, the package, with rationale for additional required actions, will be returned to the contracting officer.
- (6) As a means of identifying trends in recommended improvements/reported deficiencies, the control point will review the log on a quarterly basis. Trend data will be forwarded to the contracting office's policy, plans, and/or programs element in order to assist management in focusing on those areas where procedures have not been followed, contract deficiencies have been noted, or repetitive situations have occurred which necessitate further investigation.

SUBPART 46.2 - CONTRACT QUALITY REQUIREMENTS

46.202-4 Higher-level contract quality requirements.

(b)(90) When the contracting officer, in consultation with the Quality Assurance Specialist (QAS), has determined that use of higher-level quality requirements is warranted, the contracting officer shall give contractors the option to implement a documented quality system based on the appropriate International Organization for Standardization (ISO9000), American National Standards Institute (ANSI) or American Society for Quality Control (ASQC) Q9000 standard, or a system that meets other recognized industry (but non-ISO/ANSI/ASQC) standards, and that meets the Government's requirement. The system shall not have previously been determined by the Government to be insufficient for its purposes. In order to provide this option to suppliers contractually, FAR 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), shall be used. The contracting officer shall include FAR 52.246-2, Inspection of Supplies-Fixed Price, whenever FAR 52.246-11 is used. The blank to be filled in at subparagraph (b) of the provision shall generally contain the following, or

substantially equivalent, language: "ISO 9002 or ANSI/ASQC 092, unless otherwise specified, at the election of the contractor (contractor must indicate its preference for a particular standard(s))." The contracting officer shall recognize quality systems that satisfy the needs of the individual procurements, whether they are modeled on military, commercial, national, or international quality system standards. Some contractors may have third party certification of their quality systems, which the private sector devised to administer the ISO 9000 series standards. However, third party certification is not required. Certification information may be provided as documentation and evidence to support the system the contractor proposes.

(91) The "unless otherwise specified" wording permits not only the use of 9001 or some other applicable standard, but also the relatively infrequent use of ISO9003, at the recommendation of the QAS, or situations where use of a commercial standard is encouraged, but ISO 9002 is considered too stringent. In the event the contractor is able to meet other recognized industry (but not ISO/ANSI/ASQC) standards, these may also be indicated in the blank space of this subparagraph. Because use of the ISO/ANSI/ASQC standards already provide some flexibility with regard to quality systems, industry standards apart from those formalized in the ISO 9000/Q9000 series should be rarely used.

(92) If after consultation with the QAS, the contracting officer determines that higher-level quality requirements are required, the contracting officer may make a determination to reduce or tailor the requirements of ISO 9001 and 9002 if appropriate. ISO 9000 standards should be the framework against which inapplicable aspects may be excluded when tailoring the requirement.

(93) The contracting officer is encouraged to modify existing contracts to permit use of the appropriate ISO 9000/Q9000 standard instead of MIL-I-45208A and MIL-Q-9858, which have been eliminated from the active section of the Department of Defense Index of Specifications and Standards (DoDISS), if the contractor and Government mutually agree to the change. This will ordinarily be accomplished at no cost to either party. The contracting officer is cautioned not to use ISO 9003 in place of a MIL-I-45208A system, since these are not equivalent systems. (The latter is more stringent as a stand-alone document.) Use of ISO 9003/Q9003 is only appropriate where conformance to requirements is to be assured solely at final inspection and testing.

(94) *Any quality system proposed by the contractor shall provide for the Government's ability to audit and validate its capabilities to ensure the safety of the items and satisfaction of the customers. Additionally, during any pre- or post-award conference, the contracting officer shall stress that the quality system proposed shall be based on ISO 9000 or ANSI/ASQC 9000 standards, or a system that meets other recognized industry standards. It shall be made clear that the contractor retains quality responsibility for the supplies or services furnished under the contract and their conformance to the contract requirements.*

(95) *It may be appropriate to evaluate the contractor's proposed quality system in the context of the technical evaluation portion of a best-value source selection. If evaluating a quality system is part of the technical evaluation, then quality assurance personnel should perform the evaluation of quality as the subject matter experts in ISO (or similar validated and/or certified systems).*

46.202-4-90 Manufacturing process controls and in-process inspections.

(1) Except for conditions cited immediately below, the clause at 52.246-9001, Manufacturing Process Controls and In-Process Inspections, shall be used in solicitations that require **higher-level contract quality** requirements, when a need exists to strengthen manufacturing process controls and in-process inspections to assure the integrity of the product.

(2) The clause at 52.246-9001 shall be used in all clothing and textile (C&T) solicitations that require **higher-level contract quality requirements in accordance with FAR 46.202-4. The clause at FAR 52.246-11, Higher-Level Contract Quality Requirement (Government Specification) and the clause at 52.246-9001** shall be used in C&T solicitations for Government-furnished material (GFM), **and shall flow down to the finisher when Contractor-furnished material is a solicitation requirement.** C&T solicitations for GFM shall contain coverage to ensure that **higher-level contract quality requirements** and the clause at 52.246-9001 are applicable to the finisher in the event a converter is awarded the prime contract.

SUBPART 46.3 - CONTRACT CLAUSES

46.390 Certificate of quality compliance (COQC).

(a) The contracting officer shall insert the clause at 52.246-9000, Certificate of Quality Compliance, in all solicitations and contracts for safety-critical items. The contracting officer shall also include the clause in other solicitations and contracts for supplies which meet both of the following conditions:

(1) The material being solicited is required to be produced in accordance with a product specification, drawing, or standard which is designated in the procurement item description (PID).

(2) The Engineering Support Activity, Specification Preparing Activity, and/or Center quality/technical activity have recommended to the contracting officer that objective quality evidence in the form of a specific COQC is needed to ensure that the material offered by the supplier meets all contract and specification requirements. (This recommendation may be accomplished in an automated manner, via the Contract Technical Data File (CTDF) field, "COQC"; or the Center Quality element may otherwise inform the contracting officer that a COQC is required for the particular item.)

(b) The clause may be used regardless of the location (source or destination) at which Government contract quality assurance actions are to be performed. In the case of destination-inspected material, the certificate (or a copy) must accompany the shipment. For source-inspected material, the original certificate must be available for inspection by the Government at the contractor's facility at the time the material is presented for acceptance. A copy may (but need not) accompany the shipment.

46.391 Measuring and test equipment.

The contracting officer shall insert the clause at 52.246-9003, Measuring and Test Equipment, in solicitations and contracts which contain the COQC and which call for inspection at source. This clause may also be used independently of the COQC clause.

46.392 Product verification testing (PVT).

The contracting officer shall insert the clause at 52.246-9004, Product Verification Testing (PVT), in solicitations and contracts which contain the COQC clause and which call for inspection at source. This clause may also be used independently of the COQC clause.

SUBPART 46.4 - GOVERNMENT CONTRACT QUALITY ASSURANCE

46.402 Government contract quality assurance at source.

(g) See 46.403 below.

(h) Government contract quality assurance actions shall be performed at source for supplies having a critical application. Exceptions to this policy shall generally be made for off-the-shelf items, or in those situations where previous acquisition or quality history based on objective evidence permits us to anticipate the receipt of fully-acceptable supplies. In these cases, a determination may be made to perform Government contract quality assurance actions at destination. Objective evidence of good quality history includes such indicators as laboratory testing results from Government-owned or -contracted labs; previous acquisition experience of a sufficient volume/period, during which there were no reported product defects/first article failures/ recurring waiver requests; prior quality certification under a Qualified Products List or Qualified Manufacturer List program; and the like. This determination shall be documented in contractor history files by item. When source inspection is still required for a critical application item, and the item is acquired from a sole source that will not permit quality assurance at source, the matter should be negotiated on a case-by-case basis to provide adequate consideration to the Government for the added cost of performance of the necessary technical quality assurance at destination, at a designated Government/commercial laboratory, or at the using activity. Conversely, if the supplier insists on quality assurance at source for noncritical or noncomplex items which are normally assigned for quality assurance at destination, or for those critical application items that are exceptions to the source inspection requirement, this matter should be negotiated with adequate consideration flowing to the Government, on a case-by-case basis for the added cost of performance of unnecessary Government quality assurance at source.

(90) In addition to the circumstances cited in FAR 46.402, contract quality assurance at source may also be necessary when there are requirements for technical inspection; e.g., first article inspection, in-process inspection, and/or requirements

for special testing or detailed inspection. Contracts should be assigned for contract quality assurance at destination if verification as to type and kind, quantity, and condition is sufficient.

46.402-90 Acquiring quality assurance support on contracts awarded to contractors located overseas.

When the solicitation designates quality assurance at source and the award is anticipated to be made to a contractor located overseas, the contracting officer will obtain a commitment from the cognizant overseas DCMC component or host nation Government quality assurance authority prior to the award of the contract to perform the requested contract administration services (CAS). Contracting activities are authorized to deviate from this requirement when acquisition history provides confidence that adequate technical/quality CAS for a specific contract commodity is available in an applicable overseas geographical area.

46.403 Government contract quality assurance at destination.

(a) Prior to designating that Government contract quality assurance actions will be performed at destination, the contracting officer shall determine that the--

(90) Depot or receiving activity has the technical ability to perform quality assurance;

(91) Necessary technical data, specifications, blueprints, etc., are available at the receiving point or will be furnished the receiving activity prior to receipt of the supplies; and

(92) Equipment required to perform quality assurance is available at the receiving point.

(b) Acquisition of items for direct shipment overseas may be assigned for contract quality assurance at destination using the Fast Payment procedure in FAR Subpart 13.4 (DFARS Subpart 213.4) if there are no requirements for technical inspection. Other purchases for direct shipment overseas shall be assigned for quality assurance at source, unless the contracting officer determines that the provisions of FAR 46.403(b) are met. When items acquired for direct shipment overseas are shipped through freight consolidation points with contract quality assurance at destination, the ultimate overseas consignee shall be the place of performance of contract quality assurance. The solicitation and the contract shall clearly designate the overseas consignee as the destination and shall provide supplementary guidance as to transshipment point and "mark for" information. Requests for DD Form 250, Material Inspection and Receiving Report, or other evidence of receipt of material shall be addressed to the ultimate overseas consignee, and not to the freight consolidation point.

46.407 Nonconforming supplies or services.

(c)(1) The offer of nonconforming material to the Government should be the exception, and contractors should be discouraged from submitting requests for waivers/deviations (hereinafter sometimes referred to as waivers) in all cases where the contractor is at fault in producing the nonconforming supplies. Contracting officers should emphasize to the contractor that the latter is responsible for the control of product quality and for offering to the Government for acceptance only that material which conforms to contractual requirements. When evaluation of technical requirements indicates a specification change is required or would be beneficial to the Government, contracting officers shall take action through appropriate channels with the activity responsible for technical requirements to change the requirements in question, rather than waive them. Caution and good judgment must be exercised by the total Government team involved in the waiver evaluation process to ensure that technical requirements are not degraded during any attempt to assist the contractor in solving its problems with schedule compliance or with fulfilling the valid technical requirements contained in the contract. See subparagraph (f)(90), below.

(90) See definitions at 46.101 and DFARS 246.407(1). The contracting element shall control all contractor requests for waivers and deviations by maintaining a register and recording the following information: type of waiver or deviation (critical, major, or minor); brief description of the requested waiver/deviation; contract number; contractor's name; item identification (NSN and noun nomenclature); specification/technical data; date the request was received; center/service element(s) in the evaluation loop; date resolved; action taken; consideration obtained; specification change made; and any pertinent or commodity-oriented data desired. The

data shall be used to report in accordance with the Management Information System Glossary (RCS DLA(M)26(C)MIN). Unless the specification clearly defines major and minor characteristics, all test characteristic nonconformances submitted as waiver requests shall be classified as major nonconformances and processed as such. When several minor nonconformances are submitted for a single item, a determination will be made as to whether the cumulative effect is a major nonconformance.

(91) The contracting officer shall ascertain whether the contractor's request for waiver was forwarded through the ACO and includes the ACO's recommendations for approval or disapproval. The contracting officer must have the ACO's comments and recommendations, in order to evaluate properly a request for waiver. Conversely, the ACO must be fully apprised of the request for waiver to ensure that the contractor has taken action to correct and prevent recurrence of the conditions causing the nonconformance. Therefore, requests for waiver submitted directly to the contracting officer shall be returned to the contractor for resubmission through the ACO, except in those situations where time is an essential element. In such cases, the ACO's recommendations will be obtained by the most expeditious means available. The contracting officer shall refer the request for waiver to the quality and supply elements of the Center, or the CBU, for evaluation and recommendations. In addition to those criteria listed at FAR 46.407(c)(1), the following factors shall be considered in making a decision to accept or reject the waiver request:

(A) Suitability of the item for use "as is," or the practicability and cost of rework or repair. For a major nonconformance, this determination must be made by the activity responsible for technical requirements and obtained in writing.

(B) Previous request(s) for waiver(s) from the same contractor.

(C) Previous request(s) of the same nonconforming characteristics from the same contractor and/or other contractors.

(D) The supply status of the item and the effect that disapproval of the request for waiver/deviation will have on the delivery schedule.

(92) The contracting officer shall submit each accept decision on critical and major nonconformances for approval by the chief of the contracting office. The contractor will not be notified until the chief of the contracting office has made the decision to approve or disapprove the waiver request.

(d) Contracting officers shall make a conscious decision on each DLA contract whether CAO authority to accept minor nonconformances will be withheld. Contracts to new contractors, contracts for new or significantly-changed items or sensitive items (i.e., those with very high visibility), or those cases where previous experience with a contractor warrants that all minor nonconformances be submitted to the contracting office shall receive high consideration. If CAO authority is withheld, the letter of delegation sent to the CAO will clearly indicate such. All contractor requests for waiver of minor nonconformances forwarded to the contracting office shall require approval by the chief of the contracting office.

(d)(90) Contracting officers need to recognize that situations may occur where contractors have a single line producing items which may be supplied as spare parts procured under DLA contracts or further processed by the manufacturer and incorporated into major systems or subsystems procured by the military services. In many of these instances, Material Review Board (MRB) activity is authorized for use in the military service contracts. If CAO authority for approval of minor nonconformances is withheld on DLA contracts in these situations, the Centers and CAOs should work together to resolve any issues concerning how to handle material which may have been subjected to previous MRB activity in the in-process area.

(e) All nonconformance information for decisions on waiver requests made by the Center and any waiver or MRB intelligence provided by the CAO, when authority has not been withheld by the contracting office, shall be included in the contractor's performance record.

(f) (90) No waivers or deviations from design requirements are to be permitted without a commitment to verify the validity of the technical data for the item (e.g., the military or federal specification, engineering drawings, etc.) with the appropriate engineering support activity, and to change any such requirement found to be erroneous, outdated, or unduly restrictive, prior to any future procurements of the item. The only exception authorized is to satisfy requisitions under "readiness" situations and then for direct shipment only (i.e., Direct Vendor Delivery), not for stock. The Lead

Standardization Activity (LSA) will be furnished copies of all approved waivers and deviations from military or federal specifications. The LSA will assure that the specification is revised to reflect the product changes allowed by the waiver/deviation. Minor waivers/deviations resulting from errors in manufacturing or from a contractor's inability to meet valid technical requirements are to be granted only under exceptional circumstances, when such waivers are in the best interests of the Government (e.g., when backorders warrant urgent delivery), and never on a repetitive basis. Major/critical nonconformance waiver requests for the sole benefit of the contractor shall not be granted. (This waiver paragraph does not apply to off-specification fuel that can be blended at the depot to be made acceptable.)

(91) The hardware centers, and **DSCP**'s medical and clothing and textile commodities, are strongly encouraged to use the calculation provided below as a baseline, or starting point, in determining the adequacy of the contractor's offer of consideration for those rare instances in which waivers or deviations are granted and memorialized via contract modification. These costs are taken from the DLA-DORO Report, Cost of Nonconforming Supplies Update (1994). At the time the study was originally conducted several years ago, the overall DLA average cost associated with a product quality deficiency report, or PQDR, amounted to \$501 in administrative costs plus 3.55 percent of the contract value for holding costs. Today, the DLA average administrative cost is \$868; holding cost percentages have been separately established by Center, as follows (**DSCP** Subsistence and **DESC** are not included):

DSCC	=5.64% (or 0.0564)
DSCC (DESC)	=8.13% (or 0.0813)
DSCR	=5.14% (or 0.0514)
DSCP (Former DISC)	=12.81% (or 0.1281)
DSCP (C&T)	=0.07% (or 0.0007)
DSCP (Med)	=1.47% (0.0147)

(i) Calculation: Amount of consideration = \$868 + [H x proposed contract value].

Where - \$868 represents the total administrative costs to the Government; H represents the Center average holding cost proportion of the overall contract cost, expressed as a decimal, rather than as a percentage.

Step One: Multiply H for the individual Center by the contract dollar amount of the supplies covered by the waiver or deviation. This is the total holding (variable) cost component for nonconforming supplies.

Step Two: Add \$868 (the fixed, or administrative, cost to the Government of dealing with nonconformances) to the result of step one. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the waiver or deviation.

(ii) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "conforming" or satisfactory status. In such situations (and assuming the proper notification has been made in writing to the contractor), it may be preferable to leave the contract in a nonconforming status than to modify it for an insignificant amount, or at no cost to the contractor. Either course of action, modifying the contract or refusing to restore the contractor to a satisfactory status in the event of its failure to make a good-faith offer of adequate consideration, will still preserve the Government's right to maintain a record of the deficiency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(92) [Subparagraphs (f)(92) through (f)(95) do not apply to contracts containing express warranty provisions.] Nothing in this section shall be construed to require the contractor to make restitution to the Government for patent nonconformances discovered after Government inspection and acceptance in accordance with FAR clause 52.246-2, Inspection of Supplies - Fixed Price, or any other standard inspection clause. Nevertheless, in each instance of a contractor-caused, post-acceptance nonconformance, the contracting office that defective product or service, and request repair or replacement. This does not prohibit local procedures which allow for the quality element to discuss quality and technical issues with contractors in the investigation of

contractor-caused defective material prior to transmittal of the case to the contracting officer for formal notification to the contractor. After the formal notification, the contractor must decide how to respond to the request. This response (to which the contracting officer must agree as being in the best interest of the Government) may take the form of an offer of monetary restitution (including offset against other contracts), in lieu of repair or replacement in kind.

(93) If the contractor fails to respond to the notice of nonconformance, follow-up letters should be sent, as necessary. If the contractor also refuses to acknowledge the follow-ups, the contracting officer has other options, including assigning the contractor to the Contractor Alert List or ensuring that a preaward survey is performed on the contractor prior to award of any future contract. (Furthermore, whether or not the Government is provided consideration, the fact of that poor performance should still be considered in best-value decisions.)

(94) When workload constraints preclude following up on every initial post-acceptance nonconformance notification, priority should be placed where: the nonconformance is major or critical; the number or dollar amount of the items potentially affected is high; and/or the contractor has a history of tendering defective supplies to the Government.

(95) The contracting officer cannot "hold out" for a specific amount of money when the contractor volunteers a refund or contractual offset in lieu of repair or replacement. He or she may, though, determine whether the amount offered is a realistic alternative to the other ways in which the contractor could rectify the problem. If the refund amount is less than the contract price of the nonconforming items for which it is offered, it may or may not be characterized as a full voluntary refund, because it may only be a partial mitigation of damages. That is, it may not represent the full value of the Government's loss. On the other hand, where the contractor decides that repair is the appropriate form of recoupment, and such repair is less expensive to the contractor than replacement or monetary reimbursement of the full contractual price of the defective items, the Government may nevertheless have been fully compensated for the value of its loss. The contracting officer must determine whether the method of recompense provided is full mitigation for loss; that determination will affect the reporting of the recoupment. See subparagraph (96)(iv), below:

(96) At any time, the Centers should be able to ascertain the number and dollar value of all reported contractor-caused item nonconformances and their disposition. The Agency overall should be provided information on dollar totals associated with these nonconformances and with the corrective actions taken. Therefore, beginning with the third quarter of FY 95, all contracting activities exclusive of **DESC** shall compile and report to **DLSC**-POA on a quarterly basis, no later than 30 days after the end of a fiscal quarter, and cumulatively. Additionally, up to eleven previous quarters should also be reported. That is, there should eventually be twelve separate quarterly records (three complete fiscal years' worth of data) and one overall total reported in this fashion; the earliest quarter should drop off with each new reporting cycle. If there are remaining unresolved nonconformances from such a "retired" quarter, they should be written off, unless they are the subject of litigation, or a resolution is imminent. The totals requested below should be provided for all reported contractor-caused nonconformances able to be identified by contract by fiscal quarter in which notice of the nonconformance is received by the contracting officer (via PQDR or other means), rather than by contract year. Aggregated totals for collections will be maintained by quarter according to the date the nonconformance is received by the contracting officer, regardless of the date of receipt of the reimbursement. For example, if the contracting officer receives a PQDR for resolution in the second quarter of FY95 on a 1992 contract, the record of the nonconformance will be established in FY95, second quarter. If collections against that nonconformance are received in installments, the first one in the third quarter of that fiscal year and the next in FY 96, these reimbursements will both be reported against the FY 95 second quarter total. Obviously, in order to do this, the contract identity of the records comprising the total of the nonconformances for any quarter will have to be maintained at the Center; collections will need to be "credited" against the appropriate complaint. However, only totals need be reported to **DLSC**-POA, as indicated below. A sample report is provided at 90.14.

(i) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of validated complaints for which the Government should seek recompense (i.e., nonvoluntary and voluntary recoupments), except for items covered by warranty or fraudulently-tendered items covered under the Counterfeit Material/Unauthorized Product Substitution (CM/UPS) program, the contracting activity should report:

(A) total dollar value [see (iv), below];

- (B) total dollars demanded/requested;
- (C) total dollars recouped.

(ii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of defects discovered after acceptance that are covered by express warranty, the contracting activity should report:

- (A) total dollar value [see (iv), below];
- (B) total dollar demanded;
- (C) total dollars recouped.

(iii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total dollars recouped, categories (i) and (ii), the contracting activity should report:

(A) total dollars - monetary reimbursement (including, where used, contract offsets; this may also include repairs to defective items that have been retained by the Government, to the extent these can be quantified. See (f)(95), above, and (IV), below):

(B) total dollars - replacements.

(iv) In order to establish a record of nonconformance against which a voluntary or nonvoluntary recoupment can be applied, the contracting officer must make an initial evaluation of the extent of the Government's loss. In so doing, he/she will likely use the contract price of the defective items as the amount of that loss. However, this may or may not ultimately be determined the correct amount to be collected from a nonconforming contractor. If, either as a result of independent research or in response to a contractor's offer of consideration for less than the contract price, the contracting officer finds that the Government's loss would be satisfied by a lesser amount than originally indicated, the contracting officer should revise the total for nonconformance and the total requested/demanded ((A) and (B) in (i) and (ii), above) downward to what he/she considers a realistic and appropriate amount. On the other hand, total dollars recouped ((C) in (i) and (ii), above) must exactly reflect what has been collected "in cash or in kind." If the amount the contractor offers is less than the contract price but is considered adequate restitution for the nonconformance, the total for the nonconformance and the amount demanded/requested should be identical to the amount received. If the contractor's offer is less than the contract price and the contracting officer does not consider it adequate compensation for the Government's loss, the total for the nonconformance and the total demanded/requested, whether or not these are revised downward from the original record, should not be made equivalent to the contractor's inadequate recompense.

(90) No part of section 46.407 pertains to the deliberate intent on the part of the contractor to provide off-specification product, or otherwise to make a fraudulent tender to the Government. When quality assurance or other personnel discover evidence indicating that the contractor deliberately failed to honor its contractual undertaking, all cognizant parties, including the administrative contracting officer, should confer with PLFA Fraud counsel in accordance with DLAR 5500.10, Combating Fraud in DLA Operations. In line with this policy, recoveries for fraud should continue to be reported as collections by the Office of General Counsel; however, they should not be included in the recoupment reporting scheme set forth in (f)(96), above.

46.470-1 Planning.

(90) The planning necessary to determine a "tailored" approach to Government contract quality assurance actions shall include, but not be limited to, consideration of the following:

- (1) Possible effect of failure on health or safety of personnel, or on associated or related equipment;
- (2) Tactical, strategic, or technical importance;
- (3) Complexity, and the need for required reliability;
- (4) Pertinence, completeness, and reliability of the contractor's quality records;
- (5) Previous quality history of the contractor; and
- (6) Unit cost.

SUBPART 46.5 - ACCEPTANCE

46.503 Place of acceptance.

When a contract provides for Government contract quality assurance at source, the place of manufacture (if different from the prime contractor) will be designated for each contract line or subline item. This is necessary to provide for automatic distribution of contract documents to QARs cognizant of plant locations other than the prime contractor.

SUBPART 46.7 - WARRANTIES

46.790 Record of warranty actions.

When warranty actions have been initiated under contracts containing warranty clauses in accordance with FAR Subpart 46.7 (DFARS Subpart 246.7), it is essential all DSCs maintain a record of these warranty actions. This record is necessary to help determine the usefulness of the warranty clause versus the cost of administering the warranty actions. The record will be maintained in a central location on a fiscal-year basis. No more than two prior fiscal years' records will be retained. The record shall contain as a minimum the following information:

- (a) Date and reason warranty was exercised;
- (b) Contract number;
- (c) Contractor;
- (d) Dollar value of material covered by warranty;
- (e) Disposition of material or other consideration obtained; and
- (f) Date warranty action completed.

PART 47

TRANSPORTATION

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47.305-7 Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.

SUBPART 47.3 TRANSPORTATION IN SUPPLY CONTRACTS

47.305-3 F.O.B. origin solicitations.

(90) When the solicitation includes the requirement for minimum size of shipments or guaranteed maximum shipping weights (and dimensions, if applicable) and an award is made f.o.b. origin, insert the clause at 52.247-9000, Guaranteed maximum shipping weights or dimensions, in solicitations and contracts (see 14.408-1(96)).

(91) Solicitation Provision (Port handling and ocean costs in bid evaluation). Port handling and ocean charges available at time of issuance of solicitation shall be published in solicitations for the acquisition of supplies for overseas shipment. The provision set forth at 52.247-9001, advising that these charges are tentative and not necessarily those that will be used in the evaluation, shall also be included in the solicitation, just below any charges published. This provision will preclude the need for extension of opening dates or cancellation of solicitations and will still permit award to that bidder who is, in fact, low at time of bid opening as a result of any change in charges after issuance of the solicitation.

47.305-3 F.O.B. origin solicitations. (DEVIATION)

(a)(4)(ii) **Defense Energy Support Center (DESC)** is authorized to use **DESC** provisions 5452.247-9F12, Offers of Multiple Crude Oils (NOV 89) (DEVIATION) and 5452.247-9F13, Evaluation of F.O.B. Origin and Destination offers (APR 90) (DEVIATION) in lieu of FAR provision 52.247-46 when purchasing crude oil for the Strategic Petroleum Reserve (SPR) program.

47.305-7(b)(90) Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.

DLAD 15.304(c)(90) contains a requirement to include a transportation evaluation factor in integrated logistics management arrangements where proposals are likely to include contractor arranged transportation outside the continental United States.

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SUBPART 48.1 POLICIES AND PROCEDURES

48.101 General.

Policies and procedures for using and administering Value Engineering Change Proposals are contained in Parts 48 and 52.248-1, 2, and 3, Value Engineering of the FAR. For DLA, all contracts \$25,000 or more shall contain a Value Engineering (VE) Incentive clause. The VE incentive clause may be included in contracts less than \$25,000 if the contracting officer or the VE Program Manager believes there is a potential savings or benefit to the Government.

PART 49

TERMINATION OF CONTRACTS

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SUBPART 49.1 - GENERAL PRINCIPLES

49.101 Authorities and responsibilities.

(b) Notwithstanding a change in requirements, a contract is not to be terminated for convenience (except at no cost to the Government as provided in FAR 49.402-4(c)) if the contractor is in unexcusable default and the Government has a legal right to terminate such contract for default.

(c) The undelivered balance of \$5000 is to be used as a guideline by the contracting officer when other cost evaluation measures are not available. When Termination Decision Model (TDM) data indicate that a termination (whole or partial) would be cost effective, such information shall be considered, along with other relevant information, in making a sound termination decision by the contracting officer. Accordingly, unless termination is clearly not in the Government's best interest, all contract due-ins with positive potential savings shall be considered for cancellation/reduction regardless of the dollar value when workload permits.

SUBPART 49.4 - TERMINATION FOR DEFAULT

49.402 Termination of fixed price contracts for default.

49.402-3 Procedure for default.

(90) Procedure for default of delivery orders against Federal Supply Schedule contracts. Ordering offices shall furnish to the GSA Contracting Center responsible for the particular commodity the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices also shall report, as may be directed by the Federal Supply Service (FSS), all purchases made against the account of a contractor placed in default by that Service.

49.402-6 Repurchase against contractor's account.

(b) The defaulted contractor shall not be solicited for the repurchase and award shall not be made to the defaulted contractor when the authority for the repurchase is the Default clause, unless the contracting officer determines that there are overriding concerns in the public interest which dictate solicitation of, or award to, the defaulted contractor of the repurchase quantity. When the defaulted contractor submits the low, acceptable offer at a price not higher than the defaulted contract price, the contracting officer shall make a public interest determination if the defaulted contractor is determined to be responsible on the repurchase action. Public interest determinations shall state the contracting officer's reasons for solicitation of, or award to, the defaulted contractor for the repurchase quantity. In such cases, the contracting officer must determine that the defaulted contractor has taken corrective action and is responsible. Authority for approval of all such public interest determinations is delegated, without redelegation authority to the chief of the contracting office at the DSCs (the Executive Director for Procurement at DSCR may further delegate to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation) and to:

- (1) Commanders of DCMDs and Commander, DCMCI.
- (2) **Commander, Defense Distribution Center.**

- (3) Commander, Defense Reutilization and Marketing Service.
- (4) **Headquarters Complex Commanded, DLA Administrative Support Center.**
- (5) Administrator, Defense National Stockpile Center.
- (7) Commander, Television-Audio Support Activity.

In the event that the low offeror is the defaulted small business or another small business and the contracting officer cannot find that small business responsible, the matter shall be referred to DLA, Executive Director, Procurement Management, prior to any referral to SBA for a Certificate of Competency.

(90) Consideration of administrative costs of reprocurement after termination for default. Contracting officers may insert a clause substantially the same as at 52.249-9000, Administrative costs of reprocurement after termination for default, in solicitations and contracts. Inclusion of this clause will place contractors on notice that, subsequent to reprocurement after termination for default, the Government reserves the right to assess specific administrative costs and make written demand for these costs in addition to other costs as addressed in FAR 49.402-6(c) and FAR 49.402-7(b).

PART 50

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SUBPART 50.1 - GENERAL

50.105 Records.

(1)(iii)(a) Records required by DFARS 250.305-70 and 250.306-70 shall be forwarded to the General Counsel, DLA, which shall maintain them as required by DFARS 250.105(1)(iii).

SUBPART 50.2 - DELEGATION OF AND LIMITATIONS ON EXERCISE OF AUTHORITY

50.201 Delegation of authority.

(b)(90) Authority to approve actions under FAR Subpart 50.4, Residual powers, and DFARS Subpart 250.4 obligating \$50,000 or less has been delegated to the General Counsel and Deputy General Counsel, DLA.

50.201-70 Delegations.

(b) Defense Agencies.

(1)(A) Authority to approve requests to obligate the Government in the amount of \$50,000 or less and authority to disapprove proposed actions in any amount under the Act and the Executive Order, has been delegated to the General Counsel and Deputy General Counsel, DLA.

(1)(B) The following authority has been delegated to HCAs. This authority may be redelegated only to a staff official reporting directly to the HCA. Two copies of any redelegation shall be furnished to the General Counsel, DLA, one copy of which will be transmitted to the Under Secretary of Defense (Acquisition and Technology) (USD(A&T)).

(a) Authority to deny any request for contractual adjustment under the Act and Executive Order.

(b) Subject to the limitations in FAR 50.203, authority to approve, authorize, and direct an appropriate action, and to make all determinations and findings which are necessary or appropriate, in the examples of mistakes and informal commitment described in FAR 50.302-2 and 50.302-3, including, when necessary thereto, authority to modify, release, rescind, or cancel obligations of any sort and to extend delivery and performance dates.

SUBPART 50.3 - CONTRACT ADJUSTMENTS

50.305 Processing cases.

(b) The contracting office responsible for processing a contractor's request for contractual adjustment shall be responsible for establishing liaison and joint action with other Military Departments and other departments and agencies of the Government, except that the General Counsel, DLA, shall have such responsibility after any case is forwarded for further processing.

50.306 Disposition.

50.306-70 Record of disposition.

- (1) In addition to the documents required to be submitted to the General Counsel, DLA, by DFARS 250.306(70)(a) and (b), when a contracting office denies a request, a copy of the letter of explanation to the contractor shall also be submitted.

PART 52

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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SUBPART 52.1 - INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

52.101 Using Part 52.

(b) Numbering.

(2) Provisions or clauses that supplement FAR and DFARS.

(ii) Only those provisions and clauses in this directive that are codified are preceded by an assigned CFR chapter number.

(B) See 1.301-91(c).

(f) Dates. Provisions and clauses in this directive that were formerly in the Defense Logistics Procurement Regulation (DLPR) bear the DLPR date when the provision or clause was transferred verbatim to this directive or when only editorial changes were made. Where only editorial changes were made to clauses or provisions in this edition, the date was not changed.

52.102 Incorporating provisions and clauses.

(b)(90) The following Web address shall be inserted in the spaces provided for this purpose in the provision at FAR 52.252-1, Solicitation Provisions Incorporated by Reference, and the clause at FAR 52.252-2, Clauses Incorporated by Reference:

www.procregs.hq.dla.mil/icps.htm. (This page can also be reached by accessing the DLSC-PPP Web page at www.procregs.hq.dla.mil/regs.htm and selecting "Go to FAR/DFARS & Local Clauses.")

- (91) The Web page referenced above will provide links to all provisions and clauses (FAR, DFARS, DLAD, and local) that are incorporated by reference in DLA solicitations and awards. DLSC-PPP shall maintain the Web page and the DLAD provisions and clauses. Buying activities shall maintain their local provisions and clauses.
- (92) Buying activities shall also ensure that quality assurance provisions (QAPs), contract data requirements lists (CDRLs), and other similar contract requirements can be accessed electronically and are incorporated by reference. If the electronic address where these documents can be accessed is other than the Web page referenced above, that address shall also be identified in FAR 52.252-1 and 52.252-2.
- (93) Archive databases of provisions, clauses, and other contract requirements that are incorporated by reference and have been superseded within the last three years (or longer period, if determined appropriate by the buying activity) shall also be maintained and made accessible electronically. The archive database shall identify a point of contact who can provide older documents that are not available in the archive database. DLSC-PPP and the buying activities shall maintain the DLAD and local archives, respectively.
- (94) Buying activities may identify reasonable circumstances when incorporation in full text is appropriate, such as the following:
 - (i) For approximately the first six months after a significant new policy is issued (e.g., Central Contractor Registration);
 - (ii) When incorporation by reference is not practical, effective, or efficient (e.g., when a provision or clause is almost entirely composed of fill-ins);
 - (iii) When noncompliance with contract terms is significantly reduced by incorporation in full text; or
 - (iv) When incorporation in full text is more suitable to the nature of the business segment (e.g., for commodities subject to voluminous technical requirements that change frequently).

* * * * *

SUBPART 52.2 - TEXTS OF PROVISIONS AND CLAUSES

52.200 Scope of subpart.

This subpart sets forth the texts of all DLAD provisions and clauses, and for each provision and clause, gives a cross-reference to the location in the DLAD that prescribes its use.

52.208-9000 Price adjustment on Federal Prison Industries, Inc. (FPI) contracts/orders.

As prescribed in 8.604(c)(90)(i), insert the following clause:

PRICE ADJUSTMENT ON FEDERAL PRISON INDUSTRIES, INC. (FPI) CONTRACTS/ORDERS (DEC 1991) - DLAD

The unit price in this contract/order is subject to later adjustment if necessary to incorporate the results of agreement between the Commissioner of FPI and the Executive Director, Procurement Management, HQ DLA, or their authorized representatives. The arbitration provision of Section 4124 of Title 18, United States Code, shall not be exercised except in the case of a disagreement on the part of the Commissioner, FPI and the Executive Director, Procurement Management, HQ DLA.

(End of clause)

52.211-9000 **Government** surplus material

As prescribed in 11.302(90), insert the following clause:

GOVERNMENT SURPLUS MATERIAL (**MAY 1999**) - DLAD

(a) With respect to the surplus supplies being offered, the Offeror **represents that:**

(1) *The supplies are unused and in good condition.*

(2) *The supplies were purchased by the Offeror from the Government selling agency or other source identified below. (If the supplies were purchased from a Government selling agency, identify the agency, the contract date, and the contract number. If the supplies were purchased from the Government by a source other than the Offeror, also identify that source and its address. If complete information is not available, attach an explanation as to when, where, and how the property was acquired.)*

Government Selling Agency
Or Other Source

Contract Date
(Month, Year)

Contract Number

(3) *The supplies (i) // have // have not been altered, modified, or refurbished, and (ii) // do // do not contain cure dated components. (If the supplies are to be reconditioned or altered, attach a complete description of the work to be done.)*

..

(4) *The Offeror //has // does not have the supplies. (If the Offeror does not have the supplies, attach an explanation as to how the offered quantities will be secured.)*

(5) *If items have data plates attached, the Offeror has furnished a copy of information contained thereon, which is stated below:*

(6) *The offered item(s) // are // are not in their original package. (If the original package is being used, state below all original markings and data, including original contract number, cited on the package, and provide a copy or facsimile of package markings.)*

Contract Number

NSN

Cage Code

Part Number

Other Markings/Data

(b) *The Offeror agrees that in the event of award and notwithstanding the provisions of the solicitation, inspection and acceptance of the surplus supplies will be performed at origin or destination subject to all applicable provisions for origin or destination inspection.*

(c) *Failure to provide the information requested by this clause may result in rejection of the offer for failure to meet the requirements of the solicitation.*

(End of Clause)

52.211-9001 Market Acceptance.

As prescribed in 11.103(a), insert the following provision:

MARKET ACCEPTANCE (FEB 1996) - DLAD

The Offeror shall provide with its offer the following information to establish that the offer meets the market acceptance criteria in the requirements document: [the Contracting Officer shall insert the specific documentation requirements].

(End of provision)

Alternate I (FEB 1996) - DLAD. The contracting officer may substitute the following paragraph for the basic provision to obtain documentation after offers are received:

The Government reserves the right to request information to establish that the offer meets the market acceptance criteria in the requirements document.

52.211-9002 Priority rating.

As prescribed in 11.604(90), insert the following clause:

PRIORITY RATING (FEB 1996) - DLAD

This contract is assigned a priority rating under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR 700) which requires contractors to utilize said rating in obtaining the products, materials, and supplies needed to fill their contracts. In the event the contractor is unable to obtain the necessary products, materials, and supplies to complete the contract, the contractor shall immediately advise the DCMD or the appropriate DSC priorities and allocations (P&A) officer through the cognizant ACO or contracting officer. The P&A officer or the DCMD industrial specialist will provide necessary assistance or will provide the necessary instructions to complete DoC ITA Form 999, Request for Special Priorities Assistance. This form will be processed through appropriate channels to the Department of Commerce which, upon receipt, will take action to make the needed supplies available to the applicant.

(End of clause)

52.211-9003 Conditions for Evaluation of Offers of Surplus Material.

As prescribed in 11.302(90), use the following provision:

CONDITIONS FOR EVALUATION OF OFFERS OF SURPLUS MATERIAL
(JUN 1999) - DLAD

(a) *The Agency will evaluate offers of surplus material when the contracting officer determines the offeror is otherwise in line for award, after adding the cost of evaluation (\$200 for internal evaluation and, if applicable, an additional \$500 for Engineering Support Activity (ESA) evaluation plus any additional fees required for special testing and/or inspection). The Agency will evaluate an offer of surplus material even when the offeror is not otherwise in line for award, if avoidance or significant improvement of a backorder situation, or the urgency of need, overrides the cost effectiveness of conducting the evaluation, or the benefits of awarding to another offeror otherwise in line for award. If it is determined that an urgent requirement for the item exists, and the time to perform the evaluation and effect delivery would exceed the time to effect delivery from a non-surplus offeror, then the offer of surplus material will not be considered. If the solicitation advises that offers of surplus material will only be evaluated to accommodate unique contingencies, offerors may offer surplus material at their own risk.*

(b) *Offers of surplus material require supporting documentation to demonstrate that the material being offered was previously owned by the Government. Offerors may provide this information at the time the offer is submitted. Examples of such supporting documentation include:*

- (1) For national or local sales conducted by sealed-bid, spot bid, or auction methods, a solicitation/Invitation For Bid that identifies items by sales item/lot number and National Stock Number (NSN), coupled with a DRMS Form 1427, Notice of Award, Statement and Release Document, that documents the sale by sales item/lot number;*
- (2) When the surplus material offered is in its original package, a copy or facsimile of all original package markings and data, including original contract number (see DLAD 52.211-9000, Government Surplus Material, subparagraph (a)(6));*
- (3) For DRMS Commercial Venture (CV) sales, shipment receipt/delivery pass documents that identify items sold to the original surplus sales purchaser by NSN, nomenclature, Disposal Turn-In Document (DTID) Number, and/or requisition*

number, delivery order number, and line item number; and invoices/receipts used by the original purchaser to resell the material that allow traceability back to the original documentation through the invoice number, sale/resale number, lot number, and/or DTID Number; or

- (4) For DRMS Recycling Control Point (RCP) term sales, a statement of account (billing document) that identifies items sold by NSN and a requisition number that matches the requisition number on the shipping document that accompanies the material.

(End of provision)

52.213-9000 Quantity break.

As prescribed in 13.101(a)(1)(90), insert a provision substantially as follows:

QUANTITY BREAK (JULY 1999) - DLAD

If a larger quantity is obtainable at no additional total price due to a minimum order quantity/value or any other reason, the offeror agrees to record below the maximum quantity of the product cited in this RFQ which can be furnished for such total price, along with the lower unit price for such increased quantity. If yet lower unit prices are available for greater quantities, offerors are requested to enter the lower unit prices and quantity ranges to which such prices will apply. The Government may elect to accept such alternate quantity quotations not exceeding \$100,000 without further solicitation or discussion:

Quantity Range	Unit Price
_____	_____
_____	_____
_____	_____

(End of provision)

52.213-9001 Evaluation factor for source inspection.

As prescribed in 13.106-90(a), 14.201-8(a)(90), and 15.304(c)(94), insert the following provision:

EVALUATION FACTOR FOR SOURCE INSPECTION (MAY 1999) - DLAD

This solicitation contemplates an award based on destination inspection. However, source inspection will be required for those offerors to whom formal notification thereof has been issued prior to the closing/opening date for receipt of offers under this solicitation **and allowed for offerors who make their offers contingent on source inspection.** Accordingly, an evaluation factor of \$250 will be added to the offeror's quoted price, for each source inspection required, for purposes of determining the most advantageous offer received, price and other factors considered. Nothing in this provision affects the right of the Government to perform or waive source inspection on any resultant order/contract.

(End of provision)

52.213-9002 Indefinite Delivery Purchase Order (IDPO) Agreement.

As prescribed in 13.390-5(a)(2), insert a provision in solicitations substantially as follows:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) AGREEMENT (MAR 1999) - DLAD

(a) The prospective contractor _____ agrees _____ does not agree that, if an order is placed for the solicited quantity, the Government may place additional orders for the item(s) covered by this Request for Quotations, at the same price quoted for the solicited quantity, for any order issued, within a quantity range of _____ to _____ units, within (insert time period) from the date of that purchase order, under the same terms and conditions as that purchase order. Such orders will be issued no more frequently than _____ times per quarter. The aggregate total dollar value of orders issued shall not exceed the simplified acquisition threshold **or \$5,000,000 for acquisitions conducted under FAR Subpart 13.5.** In no event shall the Government be obligated to place subsequent orders under this agreement. The initial purchase order

will contain the terms and conditions of this agreement, including this provision, and subsequent orders will cite the initial purchase order number. The contractor agrees to advise the contracting officer in writing at any point in time it determines that it cannot accept subsequent orders under this agreement.

(b) Numbering. The uniform procurement instrument identification numbering (PIIN) system will be used. The initial purchase order and subsequent orders will be distinguished by a "D" in the ninth position and a "5" in the tenth position of the PIIN. The initial purchase order will be numbered with sub-PIIN 0001. Subsequent orders will be serially numbered with sub-PIIN numbers 0002 through 9999.

(Note: Failure to agree to this provision will not affect an award decision for the solicited quantity.)

(End of provision)

52.213-9003 Indefinite Delivery Purchase Order (IDPO) Contract.

As prescribed in **13.390-5(b)(2)(i)**, insert a clause in solicitations substantially as follows:

INDEFINITE DELIVERY PURCHASE ORDER (IDPO) CONTRACT (**MAR 1999**) - DLAD

(a) The contractor _____ agrees _____ does not agree that performance under this purchase order, by furnishing the supplies specified in this purchase order (the minimum quantity), commits the contractor to provide the same supplies, in the quantity range and under the conditions specified herein. The Government may place such additional orders for the supplies specified in this purchase order at the purchase order price within a quantity range of _____ to _____ units, within (insert time period) from the date of the purchase order, under the same terms and conditions as the purchase order. Such orders will be issued no more frequently than times per quarter. The aggregate total dollar value of orders issued shall not exceed the simplified acquisition threshold **or \$5,000,000 for acquisitions conducted under FAR subpart 13.5**. In no event shall the Government be obligated to place subsequent orders under this contract. The purchase order contains the terms and conditions of this contract and subsequent orders will cite the purchase order number.

(b) Numbering. The uniform procurement instrument identification numbering (PIIN) system will be used. The purchase order and subsequent orders will be distinguished by a "D" in the ninth position, and a "5" in the tenth position of the PIIN. The initial purchase order will be numbered with sub-PIIN number 0001. Subsequent orders will be serially numbered with sub-PIIN numbers 0002 through 9999.

(Note: Failure to agree to this clause _____ will _____ will not affect an award decision for the solicited quantity.)

(End of clause)

52.213-9004 *Offeror representations, certifications, and fill-in information--electronic commerce.*

As prescribed in 13.101(b)(2)(90), insert the following provision in all solicitations below the simplified acquisition threshold issued using electronic means.

**OFFEROR REPRESENTATIONS, CERTIFICATIONS, AND FILL-IN INFORMATION-- ELECTRONIC COMMERCE
(AUG 1999) -- DLAD**

(a) Offerors are required to provide the following socioeconomic and other data in a coded, rather than a fill-in, format. This provision consolidates, to the maximum extent practicable, all applicable representations and certifications (other than those provided on an annual basis) and fill-in portions of clauses and provisions from the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), and the DLA Acquisition Directive (DLAD).

(b) This provision constitutes a recordation of the representations, certifications, and other data requirements contained in the individual provisions incorporated herein by reference via the citation(s) at each numbered paragraph. It is not intended to supersede those provisions, except that the requirement for marking certain boxes or otherwise entering information individually into these cited provisions is hereby replaced by the requirement to complete this provision 52.213-9004. The offeror is reminded that all provisions incorporated

herein by reference remain binding in their entirety. Any penalties for misrepresentation contained in the referenced provisions (e.g., penalties for misrepresentation of business status under FAR 52.219-1, paragraph (d)(2), still apply. Furthermore, additional information required by the individual provisions to be provided "at the time of" or "with" the offer must be transmitted elsewhere in your response or sent/faxed under separate cover (as appropriate) concurrently with your transmitting this transaction to the Government.

(c) The offeror may electronically access the full text of each referenced provision at, or through links provided at: <http://www.procregs.hq.dla.mil/regs>. The offeror may also request that the contracting officer provide the hard-copy full text of any DLAD or local provision(s) referenced below.

(d) The following provision segments, identified, where necessary, to a specific line item number(s), must be completed by the offeror.

01. FAR 52.204-3, Taxpayer Identification [also, FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (paragraph (b)), when used for commercial items].

01A Enter one of the following: TIN (without dashes); or the appropriate code from the list below; or state other basis why TIN is not required._____.

BA = TIN has been applied for.

TIN is not required because:

FO = Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S., and does not have an office or place of business or a fiscal paying agent in the U.S.

FG = Offeror is an agency or instrumentality of a foreign government.

GT = Offeror is an agency or instrumentality of the Federal government.

01B Select one code from the following list that identifies the offeror's type of organization. If other than those listed, provide identification: _____.

PM = Corporate entity (not tax-exempt).

OE = Corporate entity (tax-exempt).

SP = Sole proprietorship.

PA = Partnership.

GE = Government entity (Federal, State, or local).

FG = Foreign government.

WE = International organization per 26 CFR 1.6049-4.

01C If offeror is owned or controlled by a common parent, enter Common Parent Name. (Enter "NA" if not applicable.) _____.

01D If offeror is owned or controlled by a common parent, enter Common Parent TIN (without dashes). (Enter "NA" if not applicable.) _____.

02. FAR 52.209-1, Qualification Requirements. (Applies only to an acquisition subject to a qualification requirement. When qualification applies, 02A and at least one of the items from 02B through 02F must contain an entry other than "NA.")

02A Enter the individual line item number for which qualification information is applicable. Enter "ALL" if, and only if, the responses to 02B through 02F are the same for all line items in your offer. Enter "NA" if the solicitation does not contain a qualification requirement. (NOTE: If information is being provided for individual line item numbers, segments 02A through 02F should be repeated as many times as necessary)_____.

02B Enter Manufacturer's Name or CAGE code. (Enter "NA" if clause not applicable.) _____.

02C Enter Source Name or CAGE code. (Enter "NA" if clause not applicable.)
_____.

02D Enter Item Name. (Enter "NA," if clause not applicable.)
_____.
.

02E Enter Service Identification. (Enter "NA" if clause not applicable, or "NK" if service identification is not known).
_____.

02F Enter Test Number. (Enter "NA" if clause not applicable, or "NK" if test number is not known.)
_____.

03. FAR 52.211-5, Material Requirements.

03A Enter the individual line item number for which the offeror proposes to furnish "other than new" (used) material; or reconditioned/remanufactured material; or unused former Government Surplus property. Enter "ALL" if, and only if, the response to 03B is the same for all line items in your offer. Enter "NA" here and in 03B if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 03A and 03B should be repeated as many times as necessary.)
_____.

03B Select one of the following codes to describe the material the offeror intends to furnish:_____. If any code other than "NA" is entered, the offeror shall provide a list under separate cover describing such material in accordance with paragraphs (c) or (d) of the cited clause.

ON = Other than new (used)

RI = Reconditioned/Remanufactured Item

SU = New, Unused Government Surplus (If surplus material is offered, offeror must also complete provision 52.211-9000, Surplus Material.

NA = Not applicable

04. FAR 52.219-1, Small Business Program Representations; (DoD [also, FAR 52.212-3, Offeror Representations and Certifications - Commercial Items (paragraph (c)), when used for commercial items].

04A The offeror represents as part of its offer that it is a _____ business type. (Select only one code from the list below.)

B = Small Business (Use this code if your firm is a small business concern, as defined in FAR 52.219-1, paragraph (c).)

M = Small Disadvantaged Business (Use this code if your firm is a small disadvantaged business concern, as defined in FAR 52.219-1(b)(2) or FAR 52.219-23(a)).

U = Woman-owned Small Disadvantaged Business (Use this code if your firm is a woman-owned small business, as defined in FAR 52.219-1, paragraph (c), small disadvantaged business, as defined in FAR 52.219-1(b)(2) or FAR 52.219-23(a)).

W = Woman-owned Small Business (Use this code if your firm is a woman-owned small business, as defined in FAR 52.219-1, paragraph (c).)

A = Large Business (Use this code if your firm is not included in any of the above categories.)

05. FAR 52.222-22, Previous Contracts and Compliance Reports (Applies to offers exceeding \$10,000 when FAR 52.222-26 applies.)

05A (Completion of segment 05A also serves as the offeror's representation that it will obtain, prior to subcontract awards, representations signed by proposed subcontractors indicating submission of required compliance reports.) Select one code from the following list that identifies the offeror's submission of required compliance reports:_____.

Y4 = Has participated in a previous contract subject to applicable Equal Opportunity coverage, and filed all required compliance reports.

Y5 = Has participated in a previous contract subject to applicable Equal Opportunity coverage, and has not filed all required compliance reports.

N4 = Has not participated in a previous contract requiring compliance reports.

NA = Not applicable.

06. FAR 52.222-25, Affirmative Action Compliance. (Applies to offers exceeding \$10,000 when FAR 52.222-26 applies.)

06A The offeror represents as part of its offer that (select one code from the following list):_____.

Y6 = The offeror has developed and has on file required affirmative action programs.

N6 = The offeror has not developed and does not have on file required affirmative action programs.

NH = The offeror has not had previous contracts subject to the written affirmative action program requirements.

NA = Not applicable.

07. FAR 52.223-3, Hazardous Material Identification and Material Safety Data; DFARS 252.223-7001, Hazard Warning Labels; DLAD 52.223-9000, Material Safety Data Sheets and Hazard Warning Labels. (Completion of segment 07 serves as the offeror's representation that it will submit for each item as required prior to award, a Material Safety Data Sheet (MSDS) prepared in accordance with paragraph (a)(2) of the cited DLAD clause and a copy of the Hazard Warning Label, in accordance with referenced Hazard Communication Standard, Federal Standard, and any other requirement contained in the cited clauses.)

07A Enter the individual line item number for which the labeling/MSDS requirements described above apply. Enter "ALL" if, and only if, the response to 07B is the same for all line items in your offer. Enter "NA" if the provisions are not applicable. (NOTE: If information is being provided for individual line item numbers, segments 07A and 07B should be repeated as many times as necessary.) _____.

07B Select the code that indicates whether hazardous material(s) will be supplied:_____. If code Y7 is entered, in addition to the MSDS(s) and Hazard Warning Label(s), the offeror must provide under separate cover a list, in accordance with paragraph (b) of the cited FAR clause, of hazardous materials intended to be furnished. Also on that list, the offeror shall indicate the statute in accordance with which each such hazardous material will be labeled. (See paragraph (c) of the cited DFARS clause.)

Y7 = The offeror proposes to furnish hazardous material.

N7 = Hazardous material will not be furnished.

08. DFARS 252.225-7000, Buy American Act - Balance of Payments Program Certificate (applies only if the contract amount is expected to exceed \$2,500 and DFARS 252.225-7001 is included in the solicitation); and DFARS 252.225-7035, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed \$25,000 and DFARS 252.225-7036 or its Alternate I is included in the solicitation.) [Either or both of these clauses may serve as the basis for this requirement.]

08A Select one of the following: _____.

Y8 = The offeror certifies that each end product is a domestic end product, and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

N8 = The offeror certifies that not all end products are domestic end products, and further certifies the identification of every non-domestic end product and its country of origin as provided in paragraphs 09 and 10, below.

NA= Not applicable.

09. DFARS 252.225-7000, Buy American Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed \$2,500 and DFARS 252.225-7001 is included in the solicitation.)

09A Enter the individual line item number of any end product that is not a domestic end product. Enter "ALL" if, and only if, the responses to 09B and 09C are the same for all line items in your offer. Enter "NA" if the response to 08A is coded "Y8," or if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 09A through 09C should be repeated as many times as necessary.)

09B The offeror certifies that the end product identified in 09A, above, is a (select one code from the list below):

QE = Qualifying Country End Product.

NQ = Non-qualifying Country End Product.

NA = Not applicable. (Insert "NA" if the response to 09A is coded "NA," or if the provision is otherwise inapplicable.)

09C The offeror certifies that the country of origin of the end product identified in 09A, above, is as follows. (Select one of the codes below for a Qualifying Country end product; enter the name of a nonqualifying country; otherwise, enter "NA" if the response to 09A is coded "NA," or if the provision is otherwise inapplicable.)

AS = Australia

BE = Belgium

CA = Canada

DA = Denmark

EG = Egypt

GE = Federal Republic Germany

FR = France

GR = Greece

IS = Israel

IT = Italy

LU = Luxembourg

NL = Netherlands

NO = Norway

PO = Portugal

SP = Spain

TU = Turkey

UK = United Kingdom of Great

Britain and Northern Ireland

AU = Austria

FI = Finland

SW = Sweden

SZ = Switzerland

10. DFARS 252.225-7035, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program Certificate. (Applies only if the contract amount is expected to exceed \$25,000 and DFARS 252.225-7036 or its Alternate I is included in the solicitation.)

10A Enter the individual line item number of any end product that is not a domestic end product. Enter "ALL" if, and only if, the responses to 10B and 10C are the same for all line items in your offer. Enter "NA" if the response to 08A is coded "Y8," or if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 10A through 10C should be repeated as many times as necessary.)

10B The offeror certifies that the end product identified in 10A, above, is a (select one code from the list below):

QE = Is a qualifying Country (except Canada) End Product.

NE = Is a NAFTA Country End Product (applies to acquisitions from Canada for \$25,000 or more, and from Mexico for \$53,150 or more).

NN = Is an other Non-NAFTA Country End Product.

NA = Not applicable (Insert "NA" if the response to 10A is coded "NA," or if the provision is otherwise inapplicable.)

10C The offeror certifies that the country of origin of the end product identified in 10A, above, is as follows. (Select one of the codes below for a Qualifying Country, U.S.-

made, or NAFTA end product; enter the name of a nonqualifying country; otherwise, enter "NA" if the response to 10A is coded "NA," or if the provision is otherwise inapplicable.)

AS = Australia	NL = Netherlands
BE = Belgium	NO = Norway
CA = Canada	PO = Portugal
DA = Denmark	SP = Spain
EG = Egypt	TU = Turkey
GE = Federal Republic Germany	UK = United Kingdom of
FR = France	Britain and Northern Ireland
GR = Greece	AU = Austria
IS = Israel	FI = Finland
IT = Italy	SW = Sweden
LU = Luxembourg	SZ = Switzerland
MX = Mexico	

11. DFARS 252.225-7003, Information for Duty-Free Entry Evaluation.

11A Enter the individual line item number for which duty-free entry information is being provided. Enter "ALL" if, and only if, the responses to 11B through 11E are the same for all line items in your offer. Enter "NA" if the provision is not applicable. (NOTE: If information is being provided for individual line item numbers, segments 11A through 11E should be repeated as many times as necessary.)

11B Does the offeror propose to furnish either a domestic end product with nonqualifying country components for which the offeror requests duty-free entry, or a foreign end product consisting of end items, components, or material of foreign origin other than those for which duty-free entry is to be accorded?

Y9 = Yes
N9 = No
NA = Not applicable

11C Are such foreign supplies now in the United States?

YD = Yes
ND = No
NA = Not Applicable

11D Has the duty on such foreign supplies been paid?

YP = Yes
NP = No
NA = Not Applicable

11E If the response to 11D is "NP," enter amount included in offer price to cover applicable duty that has not been paid; otherwise, enter 0 (zero); if not applicable, enter "NA":

12. DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. (In addition to providing the information required in 12A, 12B, 12C, 13A, 13B, 13C, 13D, and 13E, below, the offeror shall provide the manufacturer's name and part number in the appropriate segment of this transaction.)

12A Enter the individual line item number for which the offeror intends to provide the exact product (including manufacturer's name, cage code and part number) referred to in the procurement item description (PID) of this solicitation. Enter "ALL" if the exact product(s) as specified in the solicitation will be provided for all line items in your offer. Enter "NONE" if only alternate products will be provided for all line items. Enter "NA" if only alternate products will be provided for all line items. Enter "NA" if the solicitation does not pertain to part-numbered items. (NOTE: If information is being provided for individual line item numbers, segments 12A, 12B and 12C should be repeated as many times as necessary.)

12B If 12A contains an entry other than "None" or "NA", enter the CAGE Code which pertains to the exact PID part number being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. Enter "None" if an alternate product is being offered.

12C If 12A contains an entry other than "None" or "NA", enter the exact PID part number which pertains to the item being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. Enter "None" if an alternate product is being offered._____.

13. DLAD 52.217-9002, Conditions for Evaluation and Acceptance of Offers for Part Numbered Items. (Same as above.)

13A Enter the individual line item number for which the offeror intends to provide an alternate product to the product referred to in the procurement item description (PID) of this solicitation. Enter "ALL" if alternate products to those specified in the solicitation will be provided for all line items in your offer. Enter "NONE" if only the exact product(s) will be provided for all line items. Enter "NA" if the solicitation does not pertain to part-numbered items. (NOTE: If information is being provided for individual line item numbers, segments 13A through 13E should be repeated as many times as necessary.) _____.

13B If 13A contains an entry other than "NONE" or "NA", and if the alternate product specified has been previously furnished to the Government or otherwise evaluated and approved, enter the contract or solicitation number under which it was furnished or approved. If the alternate product has been previously approved outside of a solicitation/contract process, enter the name of the approving authority. Enter "NF" if the alternate product has not previously been furnished and approved. Enter "NONE" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. _____.

13C If 13A contains an entry other than "NONE" or "NA," enter the CAGE code which pertains to the part number being offered. Enter "NONE" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. _____.

13D If 13A contains an entry other than "NONE" or "NA", enter the part number which pertains to the item being offered. Enter "NONE" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items. _____.

13E If 13A contains an entry other than "NONE" or "NA", enter "AB" if you are offering an alternate product that has not been previously approved, "PA" if this is a previously approved alternate product, or "SN" if this is a part number that supersedes the part number cited in the procurement item description (PID) of the solicitation. Enter "NONE" if the exact product is being offered. Enter "NA" if the solicitation does not pertain to part-numbered items _____.

NOTE: For each alternate product item, the offeror must furnish under separate cover the drawings, specifications, and other data required by paragraphs (c)(1) and (c)(2) of the cited provision. In addition, for items that have previously been reverse-engineered, the offeror must provide with this offer the data package and other requirements established in paragraph (e) of the cited provision.

(End of provision)

52.214-9001 Schedule--firm fixed price & fixed price with economic price adjustment. As prescribed in 14.201-2(b)(90) and 15.204-2(b)(90), insert the following or similar provision:

SCHEDULE - FIRM FIXED PRICE & FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT (JULY 1996) - DLAD

For the following items, the base unit price (before any economic price adjustment (EPA)), is comprised of two portions:

(1) a portion subject to adjustment under the EPA clause of this contract, plus

(2) the (remaining) firm fixed price portion (for which separate pricing is permitted for option periods) pursuant to the clause of this contract entitled, "OPTION TO EXTEND THE TERM OF THE CONTRACT - SEPARATE FIRM FIXED PRICE & FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT PORTIONS".

Clin _____

Firm fixed priced portion \$_____

Portion subject to EPA + _____
Total base period unit price (sum of two) \$ _____

[Note]

(End of provision)

[Note: When circumstances warrant, e.g., a substantial number of items is involved, the contracting officer may elect to repeat this price buildup in the schedule to incorporate the firm fixed price portion of each option period price, in lieu of adding the table to paragraph (c)(2) of the clause at 52.217-9001 to record this information].

52.214-9002 Trade discounts.

As prescribed in 14.201-5(c)(90) and **15.204-5(c)(90)**, a provision substantially as follows may be inserted:

TRADE DISCOUNTS (JUN 1983) - DLAD

Trade discounts offered will be considered in evaluating offers for award. Offerors who desire to do so may quote customary terms of discount for prompt payment in addition to any trade or special discount available to the Government, provided such discounts are stated separately in their offers. Unless such trade or special discounts offered are separately stated, the offeror agrees that, when the discount offered exceeds 2 percent, the entire discount will be considered as a trade or special discount which will not be treated as a discount for prompt payment and will be considered in evaluating offers for award.

(End of provision)

52.214-9003 Right to apply f.o.b. origin offer.

As prescribed in 14.201-5(c)(91), a provision substantially the same as follows may be inserted in invitations for bids:

RIGHT TO APPLY F.O.B. ORIGIN OFFER (OCT 1982) - DLAD

Unless otherwise specified by the bidder, the Government may apply an f.o.b. origin offer against any f.o.b. origin item or subitem for the same product or supplies.

(End of provision)

52.214-9004 Subcontracting to other industrial preparedness planned producers.

As prescribed in 14.201-3(90) and 15.406-3(a)(91), insert the following clause:

SUBCONTRACTING TO OTHER INDUSTRIAL PREPAREDNESS PLANNED
PRODUCERS (APR 1985) - DLAD

(a) This contract is being awarded under the authority of FAR 6.302-3 (10 U.S.C. 2304(c)(3)) for the purpose of maintaining vital facilities or suppliers in business or making them available in the event of a national emergency. Accordingly, competition is being limited for the current acquisition to those offerors with whom industrial preparedness agreements exist, or who agree to enter into industrial preparedness agreements under the Department of Defense Industrial Preparedness Program.

(b) The contractor agrees that it will not subcontract manufacturing of the deliverable end product under this contract to other firms which themselves are industrial preparedness producers for the end product. This does not preclude subcontracting for components for which subcontractors have entered into separate industrial preparedness agreements with the Department of Defense.

(End of clause)

52.215-9001 Evaluation factor for preaward survey.

As prescribed in 13.106-90(b), 14.201-8(a)(91), and **15.304(c)(95)**, insert the following provision:

EVALUATION FACTOR FOR PREAWARD SURVEY (MARCH 1994) - DLAD

(a) Although a majority of awards are made without the necessity of conducting a preaward survey (PAS) of the proposed awardee, such a survey may be required to be conducted of those offerors listed in (1) through (5) below as follows. Firms or individuals that have:

(1) Been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past * from the date of solicitation opening or closing; or

(2) Undergone reorganization under bankruptcy laws within the past * from the date of solicitation opening or closing, or are currently undergoing such reorganization; or

(3) Been included on the Defense Logistics Agency (DLA) Contractor Alert List (CAL), or are otherwise known to the contracting officer to have a poor or marginal performance history; or

(4) Within the past * received a negative PAS for an item within the same Federal Supply Class (FSC) as the item of supply, or for the same or similar service required under this solicitation; or

(5) Failed to liquidate indebtedness to DLA, to the following extent:

**

(b) As a consequence of the Government's cost incurrence associated with conducting a PAS, for purposes of determining the present responsibility of any offeror described in (a)(1) through (5) above and to ascertain the most advantageous offer received, price and other factors considered, the amount of \$369, which is the average amount of the direct costs of performing the PAS, shall be added as an evaluation factor to such offeror's total offered price.

(c) Nothing in this provision affects the right of the Government to perform or not to perform a preaward survey on any offeror.

* Insert applicable time period in accordance with **15.304(c)(95)(A), (B) and (D)**.

** Insert the extent of indebtedness that applies in accordance with **15.304(c)(95)(E)**.

(End of provision)

52.215-9002 Socioeconomic proposal.

As prescribed in **15.304(c)(4)(B)**, insert the following or similar provision:

SOCIOECONOMIC PROPOSAL (MAR 1996) - DLAD

In addition to any subcontracting plan required by the clause 52.219-9:

(i) Provide a description of the efforts your company will make to assure that small, small disadvantaged, and women-owned small business concerns will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and planned proposed range of services, supplies, and any other support that will be provided to you by small, small disadvantaged, and women-owned small business concerns. Include specific names of subcontractors to the extent they are known.

(ii) Describe any future plans your company has for developing additional subcontracting opportunities for small, small disadvantaged and women-owned small business concerns during the contract period.

(iii) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to small, small disadvantaged and women-owned small businesses.

(iv) Specify what type of performance data you will accumulate and provide to the Contracting Officer regarding your support of small, small disadvantaged and women-owned small businesses during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such firms.

(End of provision)

52.215-9003 Socioeconomic support evaluation.

As prescribed in 15.304(c)(4)(B), insert the following or similar provision:

SOCIOECONOMIC EVALUATION (OCT 1996) - DLAD

The Socioeconomic Proposal provided by the offeror under 52.215-9002 will be evaluated on a comparative basis among all offerors. An offeror that proposes a higher percentage, complexity level, and variety of participation by small, small disadvantaged and women-owned small businesses combined, generally will receive a higher rating on this factor. An offeror's efforts to develop additional opportunities for small, small disadvantaged and women-owned small businesses will also be comparatively evaluated with the proposals of other offerors. Offerors' proposals for socioeconomic support will be made a part of any resulting contract for use in determining how well the contractor has adhered to its socioeconomic plan. This plan will be monitored by the cognizant Defense Contract Management Command's small business office as a means of assisting the contracting officer in determining how well the contractor has in fact performed. This determination will then be used as a consideration prior to option exercise and future source selection decisions. Performance on prior contracts in subcontracting with and assisting small, small disadvantaged, and women-owned small businesses will be part of past performance evaluation.

(End of provision)

52.215-9004 Javits-Wagner-O'Day Act Entity Proposal.

As prescribed in 15.304(c)(91)(ii), insert the following or similar provision:

JAVITS-WAGNER-O'DAY ACT ENTITY PROPOSAL (DEC 1997) - DLAD

(a) Provide a description of the efforts your company will make to assure that Javits-Wagner-O'Day Act (JWOD) qualified nonprofit agencies for the blind or other severely disabled will have equal opportunity to compete for subcontracts under any resulting contract. Describe your current and proposed range of services, supplies, and any other support that will be provided to you by JWOD concerns. Include specific names of such subcontractors, to the extent they are known.

(b) Describe any future plans your company has for developing additional subcontracting possibilities for JWOD entities, or ways in which these entities could be partnered with other businesses and agencies in opportunities to diversify revenue production, during the contract period.

(c) Specify what proportion of your proposal, as a percentage of dollars, will be subcontracted to JWOD entities.

(d) You shall be required to submit periodic progress reports (no less frequently than annually) to the contracting officer regarding your subcontracting efforts relative to JWOD entities. Specify what type of performance data you will accumulate and provide to the contracting officer regarding your support of JWOD entities during the period of contract performance. Provide the name and title of the individual principally responsible for ensuring company support to such entities (generally, this is the individual responsible for subcontracting with small, small disadvantaged, and women-owned small businesses).

(End of provision)

52.215-9005 Javits-Wagner-O'Day Act Entity Support Evaluation.

As prescribed in 15.304(c)(91)(ii), insert the following or a similar provision:

JAVITS-WAGNER-O'DAY ACT ENTITY SUPPORT EVALUATION (DEC 1997) - DLAD

The Javits-Wagner-O'Day Act (JWOD) Entity Proposal provided by the offeror under 52.215-9004 will be evaluated on a comparative basis among all offerors. An offeror that proposes or demonstrates a higher percentage, complexity level, and variety of participation by JWOD qualified nonprofit agencies for the blind or other severely disabled as subcontractors beyond those items for which JWOD entities are the mandatory source generally will receive a higher rating on this factor during the source selection process. Offerors' proposals for such support will be made a part of any resulting contract for use in determining how well the contractor has adhered to its plan. This plan will be monitored by the cognizant Defense Contract Management Command activity as a

means of assisting the contracting officer in determining how well the contractor has in fact performed. This determination will be one factor used in the placement of orders against multiple-award contracts and/or the exercise of options in the contract's follow-on years (as applicable). Performance on prior contracts in subcontracting with and assisting JWOD entities will be used as an element of past performance evaluation in subsequent source selection decisions.

(End of provision)

52.215-9006 Javits-Wagner-O'Day Act Entity Support - Contractor Reporting.

As prescribed in 15.304(c)(91)(iii), insert the following clause:

JAVITS-WAGNER-O'DAY ACT ENTITY SUPPORT - CONTRACTOR REPORTING (DEC 1997) - DLAD

The contractor shall submit periodic progress reports (no less frequently than annually) to the contracting officer regarding the contractor's subcontracting efforts relative to JWOD entities. There is no standard or prescribed format for this requirement; however, performance data accumulated and reported by the contractor must be as specified in its offer.

(End of clause)

52.217-9000 Data pricing, evaluation, and award.

As prescribed in 17.7692, insert the following provision:

EVALUATION AND AWARD (OCT 1982) - DLAD

(a) If the offeror does not indicate a charge for data, the Government will consider and the offeror agrees that the data charge is included in the price of the end item. The Government reserves the right to waive one or more data CLINs in evaluating each offer and in awarding the contract, as the best interests of the Government may require. Each offer will be evaluated on the basis of only those data CLINs required of that offeror.

(b) Separate awards will not be made for data CLINs.

(End of provision)

52.217-9001 Option to extend the term of the contract - separate firm fixed price & fixed price with economic price adjustment portions.

Pursuant to 17.203(d), insert the following or similar clause:

OPTION TO EXTEND THE TERM OF THE CONTRACT - SEPARATE FIRM FIXED PRICE & FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT PORTIONS (JULY 1996) DLAD

(a) The Government may extend the term of this contract by written notice to the contractor no later than ____ days prior to the expiration of the contract; provided, that the Government shall give the contractor a preliminary written notice of its intent to extend at least ____ days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision. Each exercise of this option, if any, will extend the term of this contract by [number of months, weeks, etc]. The total duration of this contract, including the exercise of any options under this clause, shall not exceed [number of months, weeks, etc].

(c) The offeror agrees to furnish during the option period those items cited in the schedule that are subject to economic price adjustment (EPA), at unit prices made up of two portions:

(1) a portion applicable to the purchase costs of the specific material subject to the EPA, at the dollar value per unit in the award, modified by any adjustment under the EPA of this clause contract, and

(2) the (remaining) firm fixed price portion of the price for the same contract line item, using the applicable amount for each option period [Note]

(End of Clause)

(Note) Insert herein either:

(1) the words "using the applicable amount cited in the schedule", or (when the contracting officer decides that circumstances warrant, e.g., the award will cover only one or several items),

(2) the additional wording and table quoted below, or similar wording (in lieu of using the provision at 52.214-9001 not only for the basic performance period, but also to identify in the schedule, the firm fixed price portion of the price for each option line item).

"as follows:

ITEM NUMBER	OPTION PERIOD 1	OPTION PERIOD 2	OPTION PERIOD 3	OPTION PERIOD 4"
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52.217-9002 Conditions for Evaluation and Acceptance of Offers for Part Numbered Items.

As prescribed in 17.7501(b)(3), insert the following provision in negotiated acquisitions of replacement parts, components, and assemblies which are identified only by the manufacturer's name, part number, and a brief item description. The provision shall be used verbatim, except that the acronym "CLIN" may be substituted for the word "item" wherever it appears in the provision. When the provision is used, the following shall be inserted in the solicitation after each item description:

"Offer" based on:

Manufacturer's Name.....
Part No.

CONDITIONS FOR EVALUATION AND ACCEPTANCE OF OFFERS FOR PART NUMBERED ITEMS (NOV 1998) -
DLAD

(a) The product described by the manufacturer's name and part number or by the manufacturers name and part number as modified by additional requirements referred to in the procurement identification description (PID) of this solicitation is that product which the Government has determined to be acceptable. All offerors must indicate below whether they are offering the exact product or an alternate product and must furnish the data required for whichever is applicable. Exact product means the identical product described by the manufacturer's name and part number cited in the PID, modified (if necessary) to conform to any additional requirements set forth in the PID, and manufactured by or under the direction of the manufacturer cited in the PID. Any product not meeting these criteria is considered an alternate product even though it may be manufactured in accordance with the drawings and/or specifications of the manufacturer cited in the PID. In either case, any product offered must be either identical to or physically, mechanically, electrically, and functionally interchangeable with the product cited in the PID including additional requirements referred to in the PID, if any.

- o Exact Product - Applicable to CLIN(s).....
- o Alternate Product - Applicable to CLIN(s).....

(b) Exact product. If the exact product is offered, any offeror other than the manufacturer cited in the PID must furnish, when requested by the Contracting Officer, evidence that the product being offered is that product described by the manufacturer's name and part number specified in the PID. Such evidence may be an invoice or other correspondence from the manufacturer cited in the PID or other evidence sufficient to establish the identity of the product and its manufacturing source. In addition, if the product is manufactured for the manufacturer cited in the PID, evidence of approval and acceptance by the manufacturer cited in the PID must also be furnished.

(c) Alternate product. - No Data.

(1) This Agency has no data available for use in the evaluation of the acceptability of alternate products offered. If an alternate product is offered, the

offeror must furnish with its offer legible copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria, and other characteristics of the offered product. In addition, the offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the PID sufficient to enable the Government to determine that the offeror's product is equal to the product cited in the PID.

(2) Notwithstanding the above, when the offered product is to be manufactured in accordance with the data the offeror has obtained from elsewhere within the Government, the offeror shall either furnish the detailed data as specified in paragraph (c)(1) with the offer, or supply a description of the data package in its possession; i.e., basic data document and revision, the date the data was obtained and from whom (Government agency/activity). If the offeror does not furnish the detailed data with its offer, this contracting office will be unable to begin evaluation of the offered product until such time as the detailed data can be obtained from the Government agency/activity possessing the data.

(d) If the product offered has previously been furnished to the Government or otherwise previously evaluated and approved, indicate in the space provided below the contract and/or solicitation number under which the product was furnished or approved. If the product was furnished or evaluated and approved by a contracting activity different from the one issuing this solicitation, then so indicate in the space provided. However, offerors are advised that this contracting office may not have access to records of another activity or other information sufficient to reasonably determine the offered product's acceptability. Therefore, the information requested by paragraph (c) or (e) above, whichever is applicable for the offered product, should be furnished with the offer.

CLIN NR (s)_____have been previously furnished or evaluated and approved under contract/solicitation number _____.

(e) Offers based upon items previously reverse engineered may be considered provided an adequate data package is furnished. Additionally, the offeror must provide: traceability which establishes that the offered item represents the item specified in the PID (i.e., invoiced from an Original Equipment Manufacturer (OEM) or submission of samples having OEM markings), number of samples that were examined, the process/logic used, and raw data (measurements, lab reports, test results) used to prepare drawings or specifications for the offered item. The offeror should also provide any additional evidence that indicates the reverse engineered item will function properly in the end item and any evidence that life cycle/reliability considerations have been analyzed.

(f) Whether the exact or an alternate product is offered, the offeror must insert in the space(s) provided in Section B of the Schedule (under the heading "Offer based on:") the manufacturer's name and part number being offered.

(g) Failure to furnish adequate data and/or information as prescribed in paragraph (b), (c), or (e) above (when required) within a reasonable period of time will preclude consideration of the offer. The Agency will make every reasonable effort to determine, prior to award, the acceptability of the products offered which meet the dollar savings threshold shown below, and/or which have a reasonable chance to receive an award based on price offered. Generally, the Agency will not evaluate alternate offers not meeting the dollar threshold. The savings potential is based on the cost of evaluation (\$200.00 if only a local technical evaluation is involved, or **\$1,200.00** if the alternate offer must be forwarded to an Engineering Support Activity for evaluation). If the Agency determines that an evaluation cannot be completed before the expected contract award date due to urgent requirements for the item, the alternate offer will not be considered for the present procurement, but will still be evaluated for technical acceptability for future procurements for the same item. For alternate offers not evaluated, the offeror's complete technical data package will be returned.

(h) If offerors desire to restrict the Government's use of data submitted for evaluation, the data must bear the appropriate legends as prescribed by FAR 52.215-12. In the event an award is made to an offeror submitting data without the appropriate legend, the Government will have unlimited rights to its use as defined in DFARS 252.227-7013.

(End of provision)

() ALTERNATE I - ADEQUATE PROPRIETARY DATA (JAN 1992)

It has been determined that the Agency has adequate data available for evaluation. Insert the following paragraph (c) in lieu of paragraph (c) of the basic provision:

(c) Alternate Product - Adequate Proprietary Data

The Agency possesses adequate drawings and/or specifications for the exact product as cited in the PID, but such data are proprietary and shall be used only for evaluation purposes. If an alternate product is offered, the offeror must furnish with its offer legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria and other characteristics of the offered product.

() ALTERNATE II - INADEQUATE DATA (JAN 1992)

The Agency has determined that it does not have adequate data available for use in the evaluation of the acceptability of alternate products offered. Insert the following paragraph (c) in lieu of paragraph (c) of the basic provision:

(c) Alternate Product - Inadequate Data

(1) The Agency does not have adequate data available for use in the evaluation of the acceptability of alternate products offered. If an alternate product is offered, the offeror must furnish with its offer, legible copies of all drawings, specifications, or other data necessary to clearly describe the characteristics and features of the alternate product being offered. Data submitted must cover design, materials, performance, function, interchangeability, inspection and/or testing criteria and other characteristics of the offered product. In addition, the offeror must furnish drawings and other data covering the design, materials, etc., of the exact product cited in the PID sufficient to enable the Agency to determine that the offeror's product is equal to the product cited in the PID.

(2) Notwithstanding the above, when the offered product is to be manufactured in accordance with data the offeror has obtained from the Government, the offeror shall either furnish the detailed data as specified in paragraph (c)(1) with the offer, or supply a description of the data package in its possession; i.e., basic data document and revision, the date the data was obtained and from whom (Government agency/activity). If the offeror does not furnish the detailed data with its offer, this contracting office will be unable to begin evaluation of the offered product until such time as the detailed data can be obtained from the Government agency/activity possessing the data.

() ALTERNATE (III) - ADEQUATE CATALOG DATA (JAN 1992)

This solicitation is for the purchase of a commercial off-the-shelf item. Insert the following paragraph (c) in lieu of paragraph (c) of the basic provision.

(c) Alternate Product - Adequate Catalog Data

This is a commercial off-the-shelf item. Adequate catalog data are available at the contracting office to evaluate alternate offers. If an alternate product is offered, the offeror must furnish with its offer a commercially acceptable cross reference list or legible copies of all drawings, specifications or other data necessary to clearly describe the characteristics and features of the alternate product being offered to enable the Agency to determine that the offeror's product is equal to the product cited in the PID.

52.217-9003 Manufacturing or production information.

As prescribed in 17.7302(f), a provision substantially as follows shall be inserted in negotiated solicitations:

MANUFACTURING OR PRODUCTION INFORMATION (FEB 1996) DLAD

If offers are submitted which fail to provide the actual manufacturing/production source(s) for the item(s) offered, or, if such information is provided but restricted from disclosure (by the inclusion of the FAR 52.215-12 legend or any other proprietary or confidentiality restriction) such offers may be rejected as technically unacceptable. This provision does not apply to commercial items.

(End of provision)

52.217-9004 Reopener Clause - Cost of Specified Direct Materials/Other Direct Cost Item.

The following clause, or as modified, may be used as prescribed in 17.9205:

REOPENER CLAUSE - COST [Note 1] - SPECIFIED [Note 2] ITEM (JAN 1995) - DLAD

(a) At the time the price for this contract was established, the amount of costs anticipated in the performance of this contract could not be established with any reasonable certainty, due to [Note 3] .

(b) To achieve an award in the face of this uncertainty, it was agreed that:

(1) The contract prices for the contract line item numbers (CLINs) designated in (4) below were based in part on [Note 4] ,

(2) The direct cost shown in (1) above was used in determining the amounts identified in (4) below attributable to this contingency, which were included in the contract prices for such CLINs, and which amounts serve as the basis for any price adjustments under this clause.

(3) Within 30 days from [Note 5] , the Contractor shall submit, using SF form 1411, its calculations of the revised CLIN prices identified in (4) below,

(4) Pending such submission, the following contingent amounts for direct costs plus associated indirect costs and profit for the item identified in paragraph (a) were incorporated into the contract unit prices at time of award (basic and any options) for this item:

CLIN #	Amount for Item in CLIN Unit Prices
_____	\$ [Note 6]
_____	\$ [Note 6]
_____	\$ [Note 6]

(c) The Contractor warrants that the CLIN unit prices do not include any other allowance applicable to the cost of the item except as stated in subparagraph (b)(4) above.

(d) Subject to any restrictions of this clause, the price of this contract is subject to adjustment, calculated as exemplified below, at any time during contract performance that the weighted average unit price the Contractor will pay/has paid for the total amount of the item required in the performance of this contract differs from the amount identified in subparagraph (b)(1) above:

(1) Assume:

Weighted average item price/unit included in contract award prices (basic + any options)	= \$1.450000
Actual average item price/unit	= \$1.305000
Item total amount in CLIN 0001A	= \$0.200000
Item total amount in CLIN 0001B	= \$0.210000

(2) Calculate actual item unit price reduction:

(\$1.450000 - \$1.305000)	= \$0.145000
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(3) Calculate percent reduction:

(\$0.145000/\$1.450000)	= 10.000000%
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(4) Calculate reduction in CLIN unit prices:

CLIN 0001A (10.000000% x \$0.200000)	= \$0.020000
CLIN 0001B (10.000000% x \$0.210000)	= \$0.021000

Note: Numbers in all calculations and results shall be rounded off (if 4 or less) or up (if 5 or more) after the sixth decimal place as shown above.

(e) The Contractor shall obtain the Contracting Officer's approval in writing prior to the award on other than a competitive basis of any subcontract or purchase order for any

portion of the contract requirements for the item, based on its submission to the Contracting Officer of:

(1) Cost or pricing data (FAR 15.401), and a Certificate of Current Cost or Pricing Data (FAR 15.406-2) submitted by the prospective Subcontractor and Contractor, unless **excepted** pursuant to FAR 15.403-1.

(2) The Contractor's analysis of the Subcontractor's proposal,

(3) A memorandum detailing the principal elements, considerations, and results of negotiations of a tentative price with the prospective Subcontractor,

(4) A request for approval of the planned subcontract award.

(f) Promptly upon initial placement and any subsequent revision of subcontracts/purchase orders for the item requirements of this contract, the Contractor shall furnish a copy of such documents to the Contracting Officer, along with its calculation of any initial (downward only) or subsequent (upward or downward) price adjustment required by this clause and any other data required by the Contracting Officer to verify the item cost.

(g) Any initial price adjustment (downward only) is subject to further adjustment (upward or downward) pursuant to paragraph (f) in the event of changes in the total weighted average price actually paid by the Contractor for the quantity of the item required in the performance of this contract, except that in no event shall a weighted average item unit cost exceeding that cited in paragraph (a) be utilized in adjustments pursuant to this clause.

(h) Promptly upon contract completion, the Contractor shall furnish the Contracting Officer a copy of vendor invoices covering the total amount of the item utilized in the performance of this contract, any contract price recalculation required by this clause, and any other data required by the Contracting Officer to verify the final weighted average actual item cost under this contract.

(i) Should the Contractor fail to submit any information required by this clause or if there is no agreement on any adjustment hereunder, the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the Disputes clause of this contract.

(j) The Contractor shall include a statement on the final invoice that all price reductions required by this clause are reflected in the cumulative amount invoiced under this contract.

(End of Clause)

Note 1: The clause as shown is designed to ultimately allow for a downward only adjustment, normally from the Contractor's proposed cost. As such, the word "DECREASE" would be in the clause title. In the event no restriction is to be placed on the direction of the ultimate adjustment, the following changes are required to the clause:

(1) Title--insert "ADJUSTMENT" vice "DECREASE"

(2) Paragraph (f)--delete "(downward only)"

(3) Paragraph (g)--delete "(downward only)" and balance of sentence beginning with "except that."

Note 2: Complete the title with "DIRECT MATERIALS" or "OTHER DIRECT COST" as applicable.

Note 3: Describe the contingency which caused use of the reopener clause, explain why it occurred, and why it can't be resolved before contract award. For example:

(1) The anticipated delay until November **200** in the Contractor's submission of cost data proposal and evaluation of a planned noncompetitive subcontract for the injector assembly;

(2) The unwillingness of the peanut butter suppliers to furnish firm quotes for deliveries beyond the current 90 day period due to uncertainties in the cost of peanuts arising from the unprecedented drought conditions and resulting shortfall in the peanut crop experienced last year; or,

(3) The potential for a substantial change in the Government's total requirements under this indefinite delivery contract, which determines the incremental premium amount the Contractor must pay for product liability insurance.

Note 4: Enter a description of the item or service to be provided, its unit price and terms, define it for purposes of this clause as "the item," and include a reference as appropriate to allow identification of the source of the price (e.g., the Contractor's request for quote number or purchase order number and date). Sample wording corresponding to the examples in Note 3 are:

(1) A \$4.2 million "not to exceed" budgetary estimate, F.O.B. origin, provided in a 14 March 199 response (reference RFQ 1475885) from the sole source supplier of the injector assembly (hereafter referred to as "the item");

(2) An estimated \$1.75 per lb cost based on firm 90-day only quotes averaging \$1.4500 per lb, F.O.B. origin, submitted in January 200_ by three suppliers RFQ #7979-9101) of peanut butter in 55 gallon drums (hereafter referred to as "the item");

(3) An annual premium of \$5.00 per unit for product liability insurance (hereafter referred to as "the Item") from the Contractor's current insurance policy (#895545-501), which is subject to a reduction to \$4.75 per unit after the first two million deliveries, and \$4.25 after sales of four million units.

(Since a vendor name may be considered to be confidential by the Contractor, it should not be incorporated into a reopener clause or otherwise included in the contract.)

Note 5: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as "contract award."

Note 6: Enter the total dollar value/CLIN unit price subject to downward adjustment. These amounts should be reached through preaward discussions/negotiations and agreement with the contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared for each affected CLIN, signed by both parties, and included as an attachment to the price negotiation memorandum. Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since such information may be considered confidential by the Contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract:

Contract Price Calculations (CLIN #):

	FY 200	FY 200
Purchase Cost/Unit of the Item (a)	\$ _____	\$ _____
Quantity of Item/Unit of CLIN (b)	_____	_____
Item Cost/Unit of CLIN (a x b)	\$ _____	\$ _____
Material Overhead (% / %)	_____	_____
Subtotals	\$ _____	\$ _____
G & A (% / %)	_____	_____
Subtotals	\$ _____	\$ _____
Subtotals	\$ _____	\$ _____
Profit (% / %)	_____	_____
Cost of Money - Material (% / %)	_____	_____
Cost of Money - G & A (% / %)	_____	_____
Subtotals (each contractor FY)	\$ _____	\$ _____

Total Price/Unit of CLIN
(Assumes CLIN overlaps two Fys)

\$ _____

52.217-9005 Reopener clause - pending indirect rates proposal.

The following clause, or as modified, may be used as prescribed in 17.9205:

REOPENER CLAUSE - PENDING INDIRECT RATES PROPOSAL (JAN 1995) - DLAD

(a) At the time the price for this contract was established, agreement could not be reached on indirect expense rates due to [Note 1] . However, agreement was reached that [Note 2] of the contract price is subject to adjustment in accordance with the provisions of this clause.

(b) Within 30 days from [Note 3] , the Contractor shall submit an indirect cost rate proposal to the cognizant administrative contracting officer. Simultaneously, the Contractor shall submit a supplemental proposal to the procuring Contracting Officer for purposes of adjusting the contract price and option price, whether or not such option has been exercised. The supplemental proposal shall (1) use the methodology, direct costs, and profit indicated in paragraph (a), (2) be supported by cost or pricing data (FAR 15.401), and a Certificate of Current Cost or Pricing Data (FAR 15.406-2), and (3) include the effect of accounting system changes and contract modifications which may impact the amount of the adjustment. In no event will an upward adjustment result in a finalized contract price which exceeds \$ _____.

(c) If determined necessary by the Contracting Officer, the Contractor agrees to commence negotiations concerning the amount of the adjustment within 30 days after receipt of the supplemental proposal by the Government.

(d) Should the Contractor fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the price adjustment contemplated by this clause, then the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the Disputes clause of this contract.

(e) The Contractor warrants that the contract price does not include any other allowance for the indirect rate contingency except as shown above.

(f) Should information after award indicate the amount developed in paragraph (a) may vary significantly from the finalized price, the contract price shall be adjusted downward or upward, subject to the ceiling in paragraph (b), through negotiation.

(End of Clause)

Note 1: Enter a description of why the reopener clause was included in the contract, such as:

(1) Delay in the Contractor's submission of its revised forward pricing rate proposal for fiscal year 200_;

(2) Delay in agreement on rates for this contract, which represents a substantial portion of the Contractor's business base for fiscal year 200_;

(3) Delay in completion of the mandatory IR&D/B&P advance agreement with the Contractor or agreement on the Contractor's corporate allocation for fiscal year 200_, and a determination of its impact on projected indirect expense rates; or,

(4) The absence of agreement on the impact on projected indirect expense results of a pending review of the Contractor's corporate allocation for fiscal year 200_.

Note 2: Enter the total dollar value subject to downward adjustment. This amount should be reached through discussion and agreement with the Contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared, signed by both parties, and included as an attachment to the price negotiation memorandum. Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since such information may be considered confidential by the Contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract:

FY 200_

FY 200_

Indirect Expense Rate Calculations:

Materials Overhead Pool (a)	\$ _____	\$ _____
Materials Base (b)	_____	_____
Materials Overhead %	_____	_____
Labor Overhead Pool (c)	_____	_____
Direct Labor Hours Base (d)	_____	_____
Labor Overhead %	_____	_____
Other Direct Costs (e)	_____	_____
G & A Expenses Pool	_____	_____
Total Cost Input Base (a+b+c+d+e)	_____	_____
G&A Expenses %	_____	_____
Contract Price Calculations (CLIN _____):		
	FY 200_	FY 200_
Direct Materials	\$ _____	\$ _____
Other Direct Costs	_____	_____
Material Overhead (% / %)	_____	_____
Direct Labor Hours (hrs / hrs)	_____	_____
Direct Labor Costs	_____	_____
Labor Overhead (% / % of D.L. Hrs)	_____	_____
Subtotals	\$ _____	\$ _____
G & A (% / %)	_____	_____
Subtotals	\$ _____	\$ _____
Profit (% / %)	_____	_____
Cost of Money - Material (% / %)	_____	_____
Cost of Money - G & A (% / %)	_____	_____
Subtotals (each contractor FY)	\$ _____	\$ _____
Total Price	\$ _____	

Note 3: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as (1) contract award or (2) establishment of the revised forward pricing rate agreement.

(End of Clause)

52.219-9002 DLA Mentoring Business Agreements (MBA) Program.

As prescribed in 19.9007, insert a provision substantially as follows:

DLA MENTORING BUSINESS AGREEMENTS (MBA) PROGRAM (DEC 1997) DLAD

(a) The offeror is invited to participate in a program whereby small, small disadvantaged, and women-owned small businesses are afforded the opportunity (through the offeror's provision of developmental assistance in its capacity as prime contractor) to participate in the DLA procurement process. (The offeror may alternatively propose to mentor a Javits-Wagner-O'Day (JWOD) Act-qualified nonprofit agency.) In order to participate, the offeror shall submit a proposal outlining the assistance already rendered or to be provided to the protege, as well as the kinds of value-added activity the offeror might expect to receive, in return, from the mentored entity. The offeror-mentor may propose to provide the benefit of its managerial expertise, technical capabilities, market knowledge, etc.; the protege will be expected to provide a specialized service or product, or, potentially, admission into its own market. Participation is entirely voluntary.

(b) The Government will evaluate the offeror's proposal for participation in the DLA MBA Program on a comparative basis among all offerors, rather than via establishment of an "acceptable" standard. The factor is an independent element in the overall award decision; the offeror who proposes or demonstrates the most comprehensive plan for tutoring a protege will receive the highest rating for this evaluation factor during the source selection process. The evaluation will assess the offeror's willingness to assist such entities in receiving better market shares, improving their processes, and generally contributing to their viability under long-term contracting arrangements.

(c) The proposal submitted by the successful offeror will be incorporated into its contract with DLA. The successful offeror will be expected to incorporate the salient points of the evaluated proposal into a written agreement (the MBA) with a protege selected by the offeror. The offeror's performance under the proposal will be monitored by the contracting officer and cognizant small business specialists (from the buying activity and/or the Defense Contract Management Command) during the contract period. This performance will be one factor used to determine placement of orders against multiple-award contracts and/or exercise of options in the contract's follow-on years (as applicable). It will also be used as an independent evaluation factor, and as an element of past performance evaluation, in subsequent source selection decisions.

(End of Provision)

52.219-9003 DLA Mentoring Business Agreements (MBA) Performance.

As prescribed in 19.9007, insert a clause substantially as follows:

DLA MENTORING BUSINESS AGREEMENTS (MBA) PERFORMANCE (DEC 1997) DLAD

(a) The contractor's proposed MBA plan shall become part of this contract upon award. The contractor is hereby obligated, as part of its contractual undertaking, to enter into a written, binding mentoring business agreement with a protege based on and reflective of this plan. Performance under the MBA plan shall be evaluated by the contracting officer, and may become a consideration prior to option exercise for the follow-on years of long-term contracts. MBA plan implementation may also become an independent evaluation factor and/or part of the overall past performance evaluation factor in future source-selection decisions.

(b) The contractor-mentor and its protege(s) shall meet semi-annually with the DLA contracting officer and the small business specialist(s) from the buying activity and/or the DCMC component to review progress/accomplishments under applicable MBA proposals. The contractor is also required to submit periodic progress reports (no less frequently than annually) to the contracting officer regarding proposal fulfillment. Any MBA with a protege that has voluntarily been submitted to the Government shall be compared by the contracting officer to the contractor's proposed plan, hereby incorporated into this contract, to ensure that it adequately reflects the mentor's obligations expressed therein.

(End of clause)

52.219-9004 Small Business Program Representations

As prescribed in 19.307(90), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS (JUL 1999) - DLAD

(a) In order to facilitate the use of electronic commerce/electronic data interchange while fulfilling the requirements of the small business program, certain socioeconomic information must be provided in a coded, rather than a fill-in format. Because EC/EDI transactions are often reformatted in transmission, the use of these codes will prevent misinterpretation within the system. The recording of unique codes instead of the traditional "x-in-the-box" form of information entry may also preclude potential mistakes in socioeconomic program reporting.

(b) In order to record the representations and certifications contained in FAR provision 52.219-1, Small Business Program Representations, and in accordance with the definitions found therein, the offeror represents and certifies as a part of its offer that it is a _____ business type. (The offeror shall select the one code from the following listing which represents the offeror's business type.) The offeror's recording of its business type herein by means of an alpha code replaces the marking of the appropriate boxes in FAR 52.219-1, paragraph (b). The penalties for misrepresentation of business status still apply; see FAR 52.219-1, paragraph (d)(2).

Code B=Small Business. Enter code B if your firm is a small business concern, as defined in FAR 52.219-1, paragraph (c).

Code M=Small Disadvantaged Business. Enter code M if your firm is a small disadvantaged business concern, as defined in **FAR 52.219-23**, paragraph (a).

Code U=Woman-Owned Small Disadvantaged Business. Enter code U if your firm is a woman-owned business, as defined in FAR 52.219-1, paragraph (c), and a small disadvantaged business, as defined in **FAR 52.219-23**, paragraph (a).

Code W=Woman-Owned Small Business. Enter Code W if your firm is a woman-owned small business, as defined in FAR 52.219-1, paragraph (c).

Code A=Large business. Enter code A if your firm is not included in any of the above categories.

(End of Provision)

52.222-9000 Davis-Bacon Act - price adjustment.

As prescribed in 22.103-5, the following clause shall be included in contracts for Installation support and maintenance and repair containing option or multiyear provisions:

DAVIS-BACON ACT - PRICE ADJUSTMENT (NOV 1985) - DLAD

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits applied to this contract by operation of law or an amendment to the Davis-Bacon Act of March 1931, as amended (40 U.S.C. 267A), current at the beginning of each renewal option period or program year, shall apply to any renewal of this contract.

(c) When, as a result of an increased or decreased wage determination, the Contractor increases or decreases wages or fringe benefits of employees working on this contract to comply therewith, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustments will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on, or determination

of, any such adjustment and its effective date, the Contractor shall continue performance.

(e) The Contracting Officer or authorized representative shall, until the expiration of 3 years after final payment under the contract have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of provision)

52.223-9000 Material Safety Data Sheets and Hazard Warning Labels.

As prescribed in 23.303, insert the following clause:

MATERIAL SAFETY DATA SHEETS AND HAZARD WARNING LABELS (MAR 1992)- DLAD

(a)(1) This clause is to be used in conjunction with FAR clause 52.223-3, Hazardous Material Identification and Material Safety Data, and DFARS clause 252.223-7001, Hazard Warning Labels. Material Safety Data Sheets (MSDSs) and Hazard Warning Labels (HWLs) shall be required to be submitted by the apparently successful offeror prior to contract award. Notwithstanding paragraph 4. **of the latest Federal Standard (FED-STD) 313**, the contractor shall submit MSDSs and accompanying HWLs to the contracting office, rather than directly to the Defense Supply Center Richmond (DSCR). This will satisfy the FED-STD requirement on the part of the contractor.

(2) The MSDS must cite the solicitation number and the applicable CAGE code of the manufacturer, the part number, and, where so identified, the National Stock Number (NSN).

(End of clause)

52.225-9000 Reserved.

52.225-9001 Reserved

52.225-9002 FMS Shipping Instructions

As prescribed in 25.7302-90, insert a clause substantially as follows:

FMS SHIPPING INSTRUCTIONS (June 1998) - DLAD

The Contractor shall contact the transportation officer (TO) at the contracting activity that awarded this contract or placed the order against the contract, unless contract administration responsibilities were assigned to an office other than contracting activity that awarded the contract, for shipping instructions prior to shipment. For contracts administered by the Defense Contract Management Command (DCMC), the Contractor must submit a DD 1659, application for U.S. Government Shipping Documentation/Instructions, to the transportation office for shipping instructions 18 days prior to shipment.

(End of clause)

52.229-9000 Kentucky Sales and Use Tax exemption.

As prescribed in 29.490(c), insert the following clause in solicitations:

KENTUCKY SALES AND USE TAX EXEMPTION (DEC 1984) - DLAD

Contracts awarded under this solicitation are exempt from the Kentucky Sales and Use Tax per Kentucky tax exemption _____. No amounts for this tax should be included in bids/offers.

(End of clause)

52.233-9000 Agency protests.

As prescribed in DLAD 33.106(c) a provision substantially as follows shall be inserted in all solicitations:

AGENCY PROTESTS (SEP 1996)- DLAD

Companies protesting this procurement may file a protest 1) with the contracting officer, or 2) with the General Accounting Office, or 3) pursuant to Executive Order 12979, with the activity for a decision at a level above the contracting officer. Protests filed with the activity should be addressed to the contracting officer, but should clearly state that they are an "Agency Level Protest under Executive Order 12979." The contracting officer will forward the protest to the appropriate official for decision. (This process allows for a higher level decision on the initial protest; it is not a review of a contracting officer's decision on a protest filed with the contracting officer.) Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the contracting officer.

(End of provision)

52.246-9000 Certificate of quality compliance.

As prescribed in 46.390, insert the following clause:

CERTIFICATE OF QUALITY COMPLIANCE (DEC 1994) - DLAD

The Contractor shall prepare and furnish a Certificate of Quality Compliance (COQC) for all supplies delivered under this contract. If the supplies delivered under this contract are from more than one manufacturing lot, a separate COQC shall be prepared and furnished for each manufacturing lot represented by, manufactured or produced under a product specification, original equipment manufacturer (OEM)/manufacturer's part number, commercial, industry or military standard, or drawings, or other technical data.

(a) This Certificate shall contain the following:

(1) The Contractor's name, address, and commercial and Government entity (CAGE) code number (if assigned), the contract/order number, the applicable specification, drawing, or standard (including revision/amendment and date), identification of the specific supplies manufactured or produced (including National Stock Number, nomenclature, type, grade, and class, if applicable); for metal products, the COQC shall include the alloy designation and condition (finish and temper), if applicable. If the contractor is not a manufacturer, the Certificate shall include the name, address and CAGE Code (if assigned) for each of the entities through which the supplies or materials, components, subassemblies, assemblies or parts passed, so that traceability to the manufacturer will be readily discernible therefrom.

(2) The identification of each parameter for which the contract, specification, drawing, or standard required inspection or testing;

(3) The identification of the specific requirement for each of the parameters in (2), above, for the particular material being produced and covered by the certificate;

(4) The actual results of inspections or tests conducted by the contractor to demonstrate conformance with each of the specific requirements of (3), above;

(5) The marking requirement for the material and the source of this requirement (contract and specification or standard); and

(6) A statement, signed by an authorized contractor representative responsible for quality assurance, that (i) the lot has been produced, sampled, tested, and inspected, and marked in accordance with all contract and specification requirements; and (ii) the material complies with all of the contract and specification requirements.

(b) For contracts assigned for Government inspection at source, the Contractor shall have the completed certificate available for review by the Government representative when the material is presented for acceptance by the Government. In the case of destination-inspected material, the Contractor shall attach a copy of the completed certificate to the packing list sent with each shipment to each shipping point designated in the contract. For source inspected material, a copy may (but need not) accompany the shipment. If the Contractor offering the material to the Government is not the manufacturer of the material, the Contractor is responsible for obtaining a certified test report from the manufacturer, including it as part of this COQC, and for demonstrating that the specific material being offered under this certificate is covered by the certified test report.

(c) Unless otherwise specified by the contract, the Contractor shall be responsible for retaining the certificate for a period of 4 years. When requested by the Contracting Officer, the Contractor shall make the certificate available for review by the Government at any time during the period the certificate is required to be retained.

(End of clause)

52.246-9001 Manufacturing process controls and in process inspections.

As prescribed in 46.202-3-90, insert the following clause:

MANUFACTURING PROCESS CONTROLS AND IN-PROCESS INSPECTIONS
(Jun 1998) - DLAD

This clause supplements paragraph 4.9 (Process Controls) of **ANSI/ASQC Q9002, or equivalent standards with process controls**, and is applicable when the contract requires a **higher-level quality system** in accordance with **FAR 46.202-4**.

MANUFACTURING PROCESS CONTROLS AND IN-PROCESS INSPECTIONS

The Contractor shall:

(a) Ensure that all manufacturing operations are carried out under controlled conditions which will adequately assure that product characteristics and criteria specified by contract are achieved and maintained in the produced item. Controlled conditions include documented process control and in-process inspection procedures, adequate methods for identifying and handling material, and adequate production equipment and working environments.

(b) As a minimum, perform inspections (examinations and/or tests) during manufacturing on those product characteristics which cannot be inspected at a later stage, and ensure that process controls are implemented and effective.

(1) Manufacturing processes shall be evaluated to determine which process characteristics have an effect on the quality of the produced item. These manufacturing processes shall be identified and requirements for their control shall be specified in written process control procedures.

(2) When in-process inspection of material is not practical, control by monitoring processing methods, equipment, and personnel shall be provided. Both in-process inspection and process monitoring shall be provided when control is inadequate without both.

(3) Prompt corrective action shall be taken when noncompliance or out of control conditions occur.

(c) Clearly identify each in-process inspection and process control point at appropriate locations in the manufacturing operation.

(d) Prepare clear, complete, and current written procedures for:

(1) Each in-process inspection. Identify: the type, frequency, and amount (sampling plan/100 percent) of inspection; product characteristics to be inspected; criteria for approving and rejecting product; the record for documenting inspection results; and the method for identifying the inspection status of approved and rejected product.

(2) Each process control. Identify: the criteria, frequency, and records used verifying control of the process.

(3) Assessing the adequacy of in-process inspections and process controls. The Contractor's quality organization shall assure by periodic surveillance that procedures are followed and are effective. Records of this surveillance will be maintained.

(e) Make the documented inspection system available for review by the Government Quality Assurance Representative prior to the initiation of production and throughout the life of the contract. The Government is under no obligation to perform verification inspection or to accept product produced under the contract until the Government has received acceptable written procedures, and has been afforded the opportunity to evaluate the inspection system. Acceptance of the Contractor's inspection system by the

Government does not bind the Government to accept any nonconforming supplies that may be produced by the Contractor. Periodic evaluations of the system may be made by the Government throughout the life of the contract.

(End of clause)

52.246-9003 Measuring and test equipment.

As prescribed in 46.391, insert the following clause:

MEASURING AND TEST EQUIPMENT (**Jun 1998**) - DLAD

Notwithstanding any other clause to the contrary, and/or in addition thereto, the contractor shall ensure that the gauges and other measuring and testing equipment, used in determining whether the supplies presented to the Government for acceptance under this contract fully conform to specified technical requirements, are calibrated in accordance with **ISO 10012-1 or ANSI/NCLS Z540-1**.

(End of clause)

52.246-9004 Product verification testing.

As prescribed in 46.392, insert the following clause:

PRODUCT VERIFICATION TESTING (**Jun 1998**) - DLAD

(a) References: The applicable documents are the issues of Federal Acquisition Regulation (FAR) clause 52.246-2, "Inspection of Supplies-Fixed Price," **and ANSI/ASQC Z1.4-1993, Sampling Plan and Tables for Inspection by Attributes**, which are in effect on the date of solicitation for awards resulting from Invitation for Bids and the date of award for all other contractual actions. These documents form the basis for the Government's right to perform product verification testing (PVT) of this product. FAR 52.246-2 is hereby incorporated by reference into the contract if not otherwise called out in the purchase document.

(b) The contractor is responsible for ensuring that supplies are manufactured, produced, and subjected to all tests required by applicable material specifications/drawings specified in the purchase description of the contract. Notwithstanding any other clause to the contrary, and/or in addition thereto, the Government reserves the right to conduct PVT to ascertain if any or all requirements of the purchase identification description contained elsewhere herein are met prior to final acceptance.

(c) On any given contract, the Government may require PVT through a government designated testing laboratory on the contract or production lot at government expense. Testing will consist of chemical and/or mechanical/dimensional conformance tests as the Government deems necessary. When material under the contract is designated by the Contracting Officer/Administrative Officer for each test, the government inspector will select a random sample from the contract or production lot, and send the samples to a designated laboratory for testing. Where origin inspection is specified, the contractor agrees to make available, at the Government's request, at the manufacturing facility, subcontracting facility, and/or final point of inspection, the quantity selected by the contract administrative office quality assurance representative to verify that the entire lot tendered meets the requirements of the contract. The Government shall be permitted to select such samples at random from the production lot tendered for acceptance.

(d) [This subparagraph pertains only to contracts and bilateral purchase orders.]

(1) The PVT samples will be sent, by the Government at government expense, to a government-designated testing laboratory for product verification. The Government will notify the contractor of the results of the testing within 15 working days of receipt of the samples by the Government. If the Government fails to act within the period set forth herein for notification, the contracting officer shall, upon timely written request, equitably adjust, under the Changes clause of this contract, the delivery or performance dates and/or the contract price and any other contractual terms affected by the delay. The Government is not required to accept/reject the supplies tendered until after receipt of the PVT test results.

The Government shall have the option to require the contractor to screen the entire lot tendered for any defects noted by the PVT testing. Any defects found shall be corrected before retendering the lot for acceptance by the Government. Further, the Government may

subject this lot to additional PVT testing. If the Government disapproves the lot tendered for acceptance because of a failure to pass the PVT, the contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract. In such case, the Government reserves all rights to remedies to which it is otherwise entitled by law, regulation, or this contract.

(e) [This subparagraph pertains only to unilateral purchase orders.]

(1) The PVT samples will be sent by the Government and at government expense, to a government-designated testing laboratory for product verification. The Government will notify the contractor of the results of the testing within 15 days after receipt of the samples. If the Government fails to act within the specified time period set forth herein for notification, the contracting officer shall, upon timely written request **from the contractor**, incorporate FAR clause 52.243-1, "Changes Fixed-Price", into the purchase order, and equitably adjust the delivery or performance date and/or the price and any other terms affected by the delay. The Government is not required to accept/reject the supplies tendered until after the PVT test results.

(2) The Government shall have the option to require the contractor to screen the entire lot tendered for any defects noted by the PVT. Any defects so found shall be corrected before retendering the lot for acceptance by the Government. Further, the Government may subject this lot to additional PVT. If the Government disapproves the lot tendered for acceptance because of a failure to pass the PVT, the Government has the right to reject the entire offer, thereby releasing the parties from further obligations under the purchase order.

52.247-9000 Guaranteed maximum shipping weights or dimensions.

As prescribed in 47.305(91), insert the following clauses:

GUARANTEED MAXIMUM SHIPPING WEIGHTS OR DIMENSIONS (DEC 1985) - DLAD

Note to Administrative Contracting Officer. This award has been made on the basis of guaranteed maximum shipping weights or dimensions, and/or minimum size of shipments as specified. Take action in accordance with DLAM 8105.1, Contract Administration Manual, section 47-5, if it becomes evident that the guaranteed maximum shipping weights or dimensions will be exceeded, or if the contractor tenders delivery of less than the minimum size shipment specified, in order that action may be taken to adjust the contract price.

(End of clause)

52.247-9001 Port handling and ocean costs in bid evaluation.

As prescribed in 47.305(92), insert the following provision:

PORT HANDLING AND OCEAN COSTS IN OFFER EVALUATION (APR 1985) - DLAD

The above tentative port handling and ocean freight charges are set forth for the information of offerors. In evaluating offers received in response to this solicitation, the Government will utilize those charges which are on file as of the date of bid opening, or closing time specified for receipt of port handling and ocean freight charges actually used in evaluation, if substituted for any listed above, will be furnished interested offerors upon request.

(End of provision)

52.247-9003 Reserved.

52.247-9004 Reserved.

52.247-9005 Reserved.

52.249-9000 Administrative costs of reprocurement after default.

As prescribed in 49.402-6(90), insert the following clause:

ADMINISTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT (MAY 1988) - DLAD

If this contract is terminated in whole or in part for default pursuant to the clause included herein entitled "Default," and the supplies or services covered by the contract so terminated are repurchased by the Government, the Government will incur administrative

costs in such repurchases. The Contractor and the Government expressly agree that, in addition to any excess costs of repurchase, as provided in paragraph (b) of the "Default" clause of the contract, or any other damages resulting from such default, the Contractor shall pay, and the Government shall accept, the sum of [insert administrative cost figure] as payment in full for the administrative costs of such repurchase. ***This assessment of damages for administrative costs shall*** apply for any termination for default following which the Government repurchases the terminated supplies or services, regardless of whether any other damages are incurred and/or assessed.

(End of clause)

PART 53

FORMS

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SUBPART 53.2 - PRESCRIPTION OF FORMS

53.201 Federal acquisition system.

53.201-91 Request for Review and Approval of Contract/Solicitation Action (DLA Form 677).

(a) General. DLA Form 677 shall be used as prescribed in 1.690-6. Requests for presolicitation/prenegotiation/postaward contract action review/approval shall be addressed to HQ DLA, ATTN: **DLSC**-PPB.

(b) General instructions for preparation of DLA Form 677. Instructions for block entries are as follows:

Block No.	Title and/or Instructions
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ALL.....Fill in or "X" only those blocks pertinent to the action requested.

1/1a.....Insert the subparagraph (letter/number) of 1.690-6 that is applicable. Place an "X" in the appropriate block. If any action presolicitation/prenegotiation or postaward contract) requiring review is being resubmitted, prepare a new DLA Form 677 and indicate in the remarks block that the contract is being resubmitted.

2/2a.....Insert the date of expiration of the bid or proposal, or the date by which existing contract terms required exercise of the option. If the date entered allows less than 10 working days from date of dispatch of the request (as entered in block 18a), the request is to be considered a request for expedited review, and block 2a is to be completed. The reason for requiring expedited review is to be given in block 16, e.g., explain why an extension of the bid/proposal cannot be obtained or should not be requested. If the date entered allows 10 days or more, but an expedited review is desired, the same procedures should be followed.

3.....Describe the type of contract briefly to identify the terms governing quantity, price, and delivery, e.g.,

Firm Fixed-Price (FFP), Requirements-Fixed-Price with
EPA (Rqmts-FP w/EPA).

- 4/4a/4b/4c.....If more than one CLIN is applicable because of different F.O.B. points, cite total quantity and give the unit price range. If both F.O.B. origin and F.O.B. destination prices are applicable, give the total quantity applicable to each with the applicable prices/price ranges. When services are described, include the location of performance and the period during which services will be performed.
- 5/5a/5b.....Check the applicable block. IOMs requesting establishment of requirements contracts are to be considered as PRs. Requests for contracting action by a Military Service on other than the prescribed MIPR form are to be considered as MIPRs. The receipt dates desired in 5a and 5b are: (a) for PRs the date of receipt by the Contracting function; (b) for MIPRs the date of receipt in the Center.
- 6a/6b/6c.....Self-explanatory.
- 7/7a/8.....Self-explanatory.
- 9/9a/9b.....If the action proposed is on a definite quantity, firm fixed-price basis, check "actual. "For all other types, check "estimated." The total dollar value to be entered is that shown on the face of the proposed contract as the total amount, or total estimated amount of the action. If the action is a modification, only the amount, actual or estimated, of the modification is to be entered. Estimates should represent the amount the Government expects to pay, i.e., the maximum objective or Government Estimate. Under 9b, give the fixed-dollar amount for which funds have been committed.
- 10/10a.....If Government facilities are to be provided under the contract, check the facilities block. If facilities are being furnished rent free, insert "Rent Free" and the dollar value of the facilities. If facilities are being furnished on a rental basis, give the anticipated dollar amount of rental based on the proposed contract delivery schedule and insert "Rental." If material is to be furnished, check the material block. If the material is being furnished by the bailment method, give the total estimated value of the material included in the total contract price and insert bailment.
- 11.....Self-explanatory.
- 12.....Cite FAR paragraph number covering the exception.
- 13.....If an option extends the period of a service or indefinite delivery type contract without change in the amount of work covered, insert the maximum option period.
- 14a.....Insert the number of firms initially solicited and those firms to which solicitations were sent as the result of individual requests.
- 14b.....Self-explanatory.
- 14c.....Reflect the number of firms still in the competitive range.
- 15/15a/15b/15c....Self-explanatory.
- 15d.....The percentage relationship of the proposed price to the

immediately preceding contract award price will be shown in block 15d.
.....If there was a price adjustment based upon an EPA provision to the previous contract award price used for the price comparison in block 15d, both the contract award price and the latest EPA price should be indicated in the Remarks section.

16/17/17a/

18/18a.....Self-explanatory.

19.....Enclosure blocks to the DLA Form 677 have been prechecked. See the list of attachments in 1.690-7. Provide a chronology of significant events which have occurred during the course of the acquisition to date. It should begin with the date the purchase request was received in contracting, and list dates of subsequent events impacting the procurement cycle. DLA Form 678 may be used as a guide to identify subjects for the chronology. Delays must be indicated and the causes documented. Documentation for each event should be limited to no more than two typed lines.

General.....1. Should the space allotted on the DLA Form 677 be insufficient, the additional information shall be included on a plain sheet of paper identified as Page No. 2, etc., to DLA Form 677, Contract No. (as shown under block 8). The total number of pages shall be shown in the space provided at the bottom of DLA Form 677.

.....2. The reverse of DLA Form 677 will be used both for replies to requests for solicitation, prenegotiation and preaward approvals (section I) and to return contract files submitted as requested for postaward review (section II).

53.201-92 Contract File Content List (DLA Form 678).

(a) General. DLA Form 678 shall be used as prescribed in 1.690-7(g).

(b) General instructions for preparation and use of DLA Form 678. The blocks shall be "X'd" and/or filled in as appropriate.

(1) Filing instructions.

(i) Contract file sections shall be identified by inclusion of a divider annotated with the section identification and title, e.g., "Section A Planning and Solicitation." Sections A and B shall be filed on the left side of the file folder with section A on the bottom. Sections C and D shall be filed on the right side of the file folder with section C on the bottom.

(ii) The lowest numbered TAB within each section shall be placed at the bottom of that section. When multiple documents are present under a numbered TAB, e.g., correspondence, memoranda, they shall be filed chronologically with the most recent document on top.

(iii) It is impossible to enumerate all of the factors or conditions which may require specific documentation over and above that normally required. Therefore, as circumstances dictate, contracting officers shall describe, under the appropriate "blank" TAB Nos., e.g., Nos. 15-17; 30-32, such documentation as may be peculiar to the acquisition involved and file same in the analogous contract file section, e.g., TAB 31, Certificate of Competency.

(2) Contract documentation.

(i) The documents identified on DLA Form 678 are those which are normally required to support a sealed bid/negotiated acquisition, other than a small purchase. The file sections provided establish the logical acquisition cycle sequence of documentation. The completed file will constitute a complete chronological history of the transaction and permit ready reconstruction of the actions taken in processing the acquisition.

(ii) The following sections discuss those elements of contract documentation which merit special attention.

(3) Section A - planning and solicitation.

(i) TAB No. 1 PR/MIPR. The file must reflect the manner and extent to which the needs of the requiring activity have been met. It is essential, therefore, that in addition to the basic purchase authority, any changes and justifications be included under this TAB. In the case of amendments, the basis for change must be evidenced, e.g., in those instances where items on the purchase request have been completely lined out or quantities changed, indication must be made of the identity or authority of the individual or activity which requested/authorized the change. In other instances where contracts have been issued calling for something other than that specified on the PR/MIPR, explanation must be included as to the authority/approval for the change and from whom received. Memoranda must adequately identify individuals referred to in memoranda (e.g., statements such as "this was discussed with and concurred in by Mr. Smith in the Supply function" are inadequate). An individual's full name, title, or position, and the individual's relationship to the subject matter of the memorandum must be clearly established; this is of particular importance should postaward questions arise. Requirements shall be revalidated in those instances where excessive time has elapsed between the issuance of the purchase request and consummation of the contract (see 1.693).

(ii) TAB No. 2 specification/drawing. These documents in many instances either dictate source selection or indicate to the contracting officer the extent of possible competition. Any change either prior or subsequent to solicitation may affect final source selection. When such changes are effected, documentation supporting the change must be included in the file indicating as a minimum: the basis and authority for initiating specification/drawing change; coordination received from appropriate technical personnel; and approval/concurrence of the requiring activity. When specification/drawing changes are initiated/confirmed by the requiring agency on a PR/MIPR amendment, the documentation should be included in TAB No. 1 with an annotation in TAB No. 2 identifying the amendment number.

(iii) TAB No. 3 acquisition plan/amendments. The acquisition plan will include, as a minimum, the information included in 90.1101. The use of preprinted forms for this purpose is acceptable.

(iv) TAB No. 6 non-personal services determination. A statement by the contracting officer that the services proposed for acquisition have been determined to be non-personal in nature is not by itself sufficient to meet the requirements of FAR 37.103(a). Such determination must include the reasons and all of the facts which were deemed to substantiate the nonpersonal aspect of the services. Examples of criteria for characterizing services as non-personal rather than personal are set forth in FAR 37.104(d).

(v) TAB No. 7 Department of Labor (DOL) Wage Determinations. DOL wage determinations are normally effective for a period of 120 days after issuance and must be in effect at the time of solicitation and at the time of award. When it is necessary to obtain extensions on determinations in order to carry them through the period until award is to be made, the documentation authorizing such extension by the DOL must be included under this TAB. A copy of the request and any enclosures sent to DOL shall be included.

(vi) TAB No. 8 small business set-aside determination. The determination required under FAR 19.5 must be accurate and complete insofar as the reason given for not having a small business set-aside. Statements such as "a set-aside was not considered because of insufficient quantity" must be supported. The information included in this determination must accurately reflect the consideration given to compliance with FAR 19.5; the information included therein imposes, in turn, a responsibility to make a realistic evaluation of requirements and a current review of possible sources to substantiate the information used in determining the proposed acquisition method.

(vii) TAB No. 11 source list. The list of sources initially solicited and those to whom solicitations were subsequently issued as a result of requests are to be included; in the latter case, the date requested solicitation was issued will be indicated.

(viii) TAB No. 14 solicitation and amendments. The contract file must include the solicitation document and any amendments thereto. Amendments must accurately reflect

their issuance dates. In case of oral solicitations, the requirements of FAR 15.402(f) must be satisfied.

(4) Section B - Preaward support data.

(i) TAB No. 18 abstract of offers. Include on the abstract any conditions of the offers which are related to their evaluation; if lengthy, the "Remarks" column shall be annotated with information indicating the location in the offer of the condition, e.g., "See page ____ of the proposal for exception to specification."

(ii) TAB No. 19 packaging/transportation/freight rate data. Inclusion of transportation/freight rate data, are essential in determining the manner in which transportation costs were applied in arriving at the evaluated prices. Files must also include sufficient information to substantiate that packaging costs are equitable.

(iii) TAB No. 20 cost/pricing data. All cost or pricing data received from the offeror in support of its proposal shall be included under this TAB. If any data should be included in correspondence dealing with other matters which are pertinent to the final contract, e.g., delivery schedule, contract clauses, etc., the original correspondence will be filed under this TAB and a cross-reference (or copy of such correspondence) placed in TAB No. 44.

(iv) TAB No. 21 audit report/waiver/field pricing report. When field pricing support is requested from the cognizant contract management command activity pursuant to FAR 15.404-2(a), the report obtained, together with any attached assist reports shall be included under this TAB.

(v) TAB No. 25 certificate of current cost or pricing data. Often a contractor will provide a certificate of current cost or pricing data at the close of the negotiation session and will subsequently confirm, by letter, details of the agreements reached. In some instances, the confirming letter will include data which, although previously discussed and accepted, have not previously been presented in writing. In such cases, the certificate of current cost or pricing data presented at the close of negotiations becomes invalid; a new certificate must be obtained to reflect the contractor's last data submission upon which the final price agreement was concluded.

(vi) TAB No. 29 bid/offer evaluation worksheets, computer run. (Include documentation pertinent to source selection.)

(vii) TAB No. 30. This tab will be used to incorporate, when applicable, information received from a cognizant ACO relative to the acceptability of the contractor's disclosure statement when the firm has indicated submission of same.

(5) Section C - Other support data.

(i) TAB No. 34 unsuccessful bid/proposal. Include the notification to the offerors (either that already issued or that proposed to be issued) that bids/offers were unacceptable and the reasons therefor.

(ii) TAB No. 36 determination of late/bid proposal. All actions taken in accordance with the procedures prescribed under FAR 14.304 and 15.412 shall be included under this TAB.

53.201-93 Request for Waiver of Preaward Contract Review and Approval (DLA Form 1694).

DLA Form 1694 shall be used as prescribed in 1.690-8.

53.204 Administrative matters.

53.204-70 DD Form 350, Individual Contracting Action Report.

(b) Part B of the DD Form 350.

Block B4, Completion Date. When preparing a template (see 4.670-6(b)(4)(i)) use this item to enter the expiration date.

Block B5A, Contractor Identification Number. This block is for reporting the Contractor's nine position DUNS number according to DFARS 253.204-70(b)(5)(ii)(A).

Block B5B, Commercial and Government Entity (CAGE) Code. The additional reporting requirement at Subpart 90.9, Updating Small Disadvantaged Business Status and Women-Owned Business Status in the DD Form 350 CAGE File, applies when the small disadvantaged business status or women-owned business status is incorrect in DCARS.

Block B7, Type of Obligation. For DLA contracting offices, the DCARS will generate Code 3 to indicate a template record whenever an IDC is being reported pursuant to 4.670-6(b)(4)(i), or when a template record is being created for a blanket purchase agreement (BPA) or Federal Supply Schedule.

Block B12C, System or Equipment Code. **Enter** the three position DLA Weapons or System code from the Purchase Request trailer or other source. If not known or the item in B12A is not part of a listed weapon or system, enter "000." DCARS will convert these data into the DoD codes for DoD reporting purposes.

(c) Part C of DD Form 350.

Block C2, Reason Not Synopsized. Enter Code A, Urgency, only when Item C9, Authority for Other Than Full & Open Competition, is coded 2A and Item C8, Solicitation Procedures is coded N, Other Than Full and Open Competition.

Block C7, Number of Offers Received. Offers, for the purpose of completing C7, shall only be offers from responsible contractors capable of satisfying Government requirements. If an offer is an alternate offer and is rejected, or if award must be made before evaluation can be completed, the alternate offer is not to be counted.

(d) Part D of DD Form 350.

The DFARS requires blocks D2, D3, D5, D7, and D8 be blank under certain circumstances. If the contracting officer completes any of these items in one of those circumstances, the DCARS will convert the entry to a blank and pass the record to DoD in the required format. Block D4E, Premium Percent. DLA contracting offices may enter "000" for this item when D4B is coded A or B and D4C is Coded A. The DCARS will convert the record passed to DoD into the required format.

Block D5, Ethnic Group. For DLA, if the Small Disadvantaged Business Concern Representation, (see DFARS 252.219-7000), indicates the offeror is claiming eligibility in the Minority Small Business and Capital Ownership Development Program, Section 8(a) of the Small Business Act, then the ethnic group must also be completed and the appropriate code entered. This item must be completed for all awards made to a small disadvantaged business.

(e) Part E of DD Form 350.

Block E9 may be entered in Part E of the DD Form 350 in the margins or on the reverse side for manual reports. DCARS will provide for these items on the input screen.

(5) Block E9, National Stock Number. Enter the 13 position National Stock Number (NSN) or Local Stock Number (LSN) which defines the item of supply. Do not enter dashes, slants, or similar punctuation marks and do not show spaces between numbers or letters in the stock number. Leave blank when acquiring services (position 1 of B12A is alpha). If more than one NSN or LSN is the subject of this action, enter the stock number of the predominant item as determined by dollar value. If no stock number applies, enter the FSC shown in B12A followed by the word "NONE" without spaces between the two (e.g., "8905NONE").

(g) Special instructions for DD Forms 350 on actions of \$25,000 or less under the Small Business Competitiveness Demonstration Program.

(2)(i) Block B5A, Contractor Identification Number. Enter the Contractor's nine position DUNS number.

53.204-71 DD Form 1057, Monthly Contracting Summary of Actions \$25,000 or Less.

(d) When local procedures combine two or more actions into a single award or modification, it may be necessary to split the action into two or more lines in parts B through F. Any portion with a dollar value of more than \$25,000 shall be reported on DD Form 350. These procedures will permit accurate reporting of set-asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Examples include but are not limited to the following:

(i) One part of the action was unrestricted while the other part involved one or more socioeconomic programs such as set-asides; or

(ii) One part of the action involved Foreign Military Sales and the remainder did not.

53.205 Publicizing contract actions.

53.205-90 Contract Announcement (DLA Form 1693).

DLA Form 1693 shall be used as prescribed in 5.303.

53.213 Small purchase and other simplified purchase procedures.

53.213-90 Blanket Purchase Agreement Delivery Ticket (DLA Form 470).

This form may be used when supplies or services are acquired by means of a BPA.

(a) General. The DLA Form 470 is a cut sheet form and is designed to be used by the vendor as an acknowledgment of a call, notice of shipment, packing list, and invoice. This form eliminates the need for preparation, by the contractor, of separate forms for these purposes. Also, Government personnel requiring information on these forms will receive it on a standard format.

(b) Procedure. A supply of the forms may be provided by the contracting office to each contractor who has entered into a BPA with the Center. Upon the placing of a call, the contractor may be required to complete the BPA delivery ticket based on information contained in the written or oral call in accordance with detailed instructions to be provided by the contracting office.

(c) General instructions for preparation of DLA Form 470. After the placing of each call, complete the call, complete the form in accordance with the general instructions below, and any specific instructions you may receive with the placing of the call. Entries should be typed.

(1) Block 11. This is the date the supplies are to reach destination, not the date of shipment. Convert the number of delivery days the Government offered to an actual date. For example, if the Government offered a 30-day delivery and received the oral or written call on 1 October, enter 10/31/YY as the required date.

(2) Block 12. This is the date the supplies are to be shipped, not delivered.

(3) Blocks 13 through 19. Information for these blocks will be furnished by the contracting office at the time of the call. Enter the name and address of the consignee in block 15.

(4) Blocks 21 through 23. Entries in these blocks will be made at the time of shipment. Enter actual date shipped or delivered. No partial shipments to a particular destination may be made. If more than one shipment is made against a call, prepare two copies of this form for shipment. Copies of the shipping documents may be attached as an alternative to completing blocks 21 and 22.

(5) When using the form as an ACKNOWLEDGMENT OF CALL. Place a check mark on "*" copies of the form in the box "ACKNOWLEDGMENT OF CALL" (block 9).

(6) When using this form as a NOTICE OF SHIPMENT. Place a check mark in the box "PACKING LIST" (block 9) on "*" copies of the form in the box "NOTICE OF SHIPMENT" (block 9).

(7) When using the form as a PACKING LIST. Place a check mark in the box "PACKING LIST" (block 9) on "*" copies of the reproduced form for each consignee. Be sure blocks 21 through 23 have been completed, as applicable, on the forms used. Send "*" copies to each consignee by placing copies inside the container or in an envelope attached to the exterior of the container.

(8) When using this form as an INVOICE. At the end of the billing period, fill in "*" copies of the reproduced form which includes the shipment data for all destinations of that call as follows:

(i) Place a mark in the box marked INVOICE (block 9) of each copy of the form.

(ii) Sign and date blocks 24 and 25 of the top copy only of the form. If the BPA under which this call was issued does not provide for the fast payment procedure, the top copy must contain the signature and date (blocks 27A and 27B) of the authorized Government representative receiving and/or accepting for the Government.

"*" The number required shall be in accordance with the needs of the contracting office.

53.213-91 Shipping Instruction (DLA Form 1224). This form is used against automated simplified acquisitions.

53.213-92 Request for Quotation (DLA Form 1231). This form is used against automated simplified acquisitions.

53.219 Small business and small disadvantaged business concerns.

53.219-90 Referral of Small Business for Certificate of Competency (CoC) Consideration (DLA Form 1756).

(a) DLA Form 1756 may be used to provide information for CoC referrals as required by FAR 19.602-1, DFARS 219.602-1 and DLAD 19.602-1.

(b) General instructions for preparation of DLA Form 1756:

(1) The name, size status, and total dollar value of the next low offeror should be identified, however, referrals shall not urge a conclusion based upon the size status of the second low offeror.

(2) The remaining blocks of the form are self-explanatory.

PART 90

SUPPLEMENTAL PROCEDURES

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SUBPART 90.1 - SALE, LOAN, OR GIFT OF PROPERTY

90.101 Sale, loan, or gift of certain property (10 U.S.C. 4506).

(a) The HCAs and their authorized designees are authorized to sell, give, or lend drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished, to contractors and private firms which are or may likely be manufacturers and furnishers of supplies and equipment for use under approved production plans, whenever they determine that such action is necessary in the interest of national defense.

(b) Such drawings, manufacturing and other information, and samples of supplies and equipment to be manufactured or furnished shall be sold, given or loaned by appropriate written agreement, reciting the above determination (10 U.S.C. 4506).

(c) The foregoing determination and requirement for a written agreement will not be mandatory in the case of invitations for bids and requests for proposals. Drawings, specifications, and data furnished need not be returned unless otherwise directed by the contracting officer.

(1) In making the determination to request the return of such specifications, drawings, or any other data furnished, the contracting officer should take into consideration the following factors:

- (i) The current or probable future need of the Government for the items.
- (ii) The residual value of such items.
- (iii) Administrative and other expenses incident to handling and storage of such items.
- (iv) The probable cost of reproduction of such items in event of future acquisition.

(2) Classified material, as a general rule, will be required to be returned regardless of the criteria established above.

SUBPART 90.2 - TRAINING

90.201 Granting credit for course requirements fulfilled by alternate methods.

90.201-1 Scope and delegations.

These procedures apply to all acquisition work force members at DLA activities subject to the DLAD (see 1.103). The Heads of contracting activities have the authority to evaluate experience, education, or alternate training completed and to determine if it fulfills the requirements of mandatory DoD contracting courses. This authority may be delegated, without power of redelegation to those officials authorized to select, appoint, and terminate the appointment of contracting officers by 1.603-1(90).

90.201-2 Procedures and documentation.

Applications for credit by alternate methods will be made on the DD Form 2518, Fulfillment of DoD Mandatory Training Requirement, as outlined in DoD 5000.52-M. A copy of each DD Form 2518 along with a statement of the alternate method determined to be equivalent will be forwarded to **DLSC**-PPB for reporting purposes.

90.202 Waivers.

90.202-1 Definition.

A waiver is defined as exempting someone from taking a course without certifying that the person has gained knowledge from experience, formal education or other training. Fulfillment of requirements by alternate methods shall not be considered or used as a "waiver" of requirements.

90.202-2 Policy and procedures for requesting waivers.

Acquisition personnel will normally fulfill mandatory training requirements by course completion or alternate methods, therefore, waivers are discouraged. Requests for waivers will be forwarded to **DLSC**-PPB for evaluation and processing.

SUBPART 90.3 - SELECTION OF CONTRACTS TO BE TERMINATED FOR CONVENIENCE IN EVENT OF UNEXPECTED DECELERATION

90.301 Policy.

Terminations for convenience will be based on individual decisions resulting from a comparison of costs for termination and excess position of items versus the need for release of obligated funds for higher priority use.

90.302 Responsibilities.

The decision to terminate a contract for the convenience of the Government is the joint responsibility of the commodity manager and the contracting officer at the cognizant DSC. In those cases where the contract resulted from a MIPR, the decision to terminate for convenience is the responsibility of the MIPR initiator; however, the contracting officer, upon request, must inform the initiator of all elements which have any bearing on the status of the contract.

90.303 Procedures.

90.303-1 General procedures.

Upon receipt of a request for a cutback in contract quantities from the cognizant commodity manager, the following information will be utilized in selecting the contract for termination:

(a) Ascertain all current contracts for items involved.

(i) Determine the undelivered portion of each contract.

(ii) Consider supplies in transit (f.o.b. destination contract) as deliveries, unless the contract is delinquent and a notice to terminate for default has been sent to the contractor.

(iii) Determine what deliveries, if any, are delinquent.

(iv) Determine whether the delinquency is excusable or inexcusable.

(v) Contract quantities scheduled for direct delivery to users are not subject to termination action unless specifically so designated.

(b) If delinquency is considered inexcusable, terminate for default where appropriate.

(c) Where termination for default is not appropriate or where additional quantities remain to be cut back after termination for default, proceed in the selection of contracts to be terminated for convenience.

(1) First choice should be where contractors are agreeable to total or partial termination (voluntary or no cost settlement).

(2) Consider the following factors.

(i) Contracts involving contractors' commercial item.

(ii) Contracts awarded as rated orders.

(iii) Contracts for mandatory acquisition.

(iv) Contracts most recently awarded and those providing for longest production lead time where production has not progressed to an appreciable degree.

(v) Contracts awarded at the highest price and work down pricewise.

(vi) Partial termination of all contracts where two or more contractors are involved in lieu of total termination of a few.

(d) The dollar amount of potential settlement claims should be estimated with the assistance of DCMC. Consider:

(1) Unit price of undelivered items.

(2) Raw material on hand and/or on order.

(3) Components on hand or on order.

(4) Work in process.

(5) Unamortized start up costs.

(6) Percentage of completion.

(7) Current commercial value and saleability of the item involved.

(8) Disposal actions required, taking into consideration recoupment through sales of items to be disposed.

90.303-2 Operation procedures.

(a) The Supply function or the MIPR initiator will advise the Contracting function to cancel an item by quantities and consignee. The Supply function or the MIPR initiator will be required to indicate all open purchase requests and/or contracts when requesting information upon which to base a termination decision or when requesting cancellation by item and consignee.

(b) Contracting and Production, using procedures in 90.303, will determine what portion of each open contract should be terminated.

(c) If the Contracting function's decision indicates that the Supply function's original request should be revised, the decision will be coordinated with the Supply function. The final authority for deciding whether or not to terminate, when substantial claims are involved, is the Center Commander.

(d) Upon completion of above actions, the Contracting function will issue the termination notice with a copy to DCMC for termination settlement action.

SUBPART 90.4 - RECOVERY AND UTILIZATION OF PRECIOUS METALS (SILVER, GOLD, PLATINUM, PALLADIUM, RHODIUM, IRIDIUM) FROM SCRAP MATERIALS

90.401 General.

DoD has assigned DLA the mission to reclaim precious metals from precious metal bearing scrap and waste materials, and to make available reclaimed precious metals as Government-furnished property in acquisition of items containing precious metals. This section implements DoD Directive 4160.22, Recovery and Utilization of Precious Metals, (as revised) which establishes DoD policy governing the management of the recovery and the use of precious metals derived from precious metal bearing scrap and waste materials generated by all elements of DoD worldwide. DLA is assigned the responsibility for managing the overall program and has designated the DRMS, Battle Creek, Michigan, as the activity charged with the responsibility for managing the retrieval and refining of precious metals. Defense Supply Center **Philadelphia** (DSCP) has been assigned the supply management function for precious metals.

90.402 Policy.

(a) All DLA elements generating precious metal bearing scrap and waste materials shall establish and monitor an internal program to assure the economical reclamation of precious metals, consistent with the overall DoD policy of effecting maximum use of excess property to meet DoD needs.

(b) Recovered precious metals, after refinement, will be made available to DoD elements for their use as Government-furnished property to reduce new acquisition costs.

90.403 Responsibilities.

Commanders of each DLA field activity are responsible for the following:

(a) Reporting precious metal bearing scrap and waste materials to the DRMS Manager for disposition and shipment to destination upon notification by the DRMS Manager.

(b) Using the refined precious metals maintained in storage by the DSCP Precious Metals Inventory Manager, as GFP, whenever feasible, for contracts requiring precious metals bearing materials.

90.404 Procedures.

(a) Prior to soliciting offers for awards of contracts requiring precious metals, contact the DSCP Precious Metals Inventory Manager, DSCP-Y, indicating the item, quantity, and grade of precious metal required for the acquisition. The precious metals are identified as follows:

NSN	Nomenclature	Unit of Issue
9660-00-042-7768	Platinum granules.....	Troy ounce.
9660-00-151-4050	Platinum sponge.....	Troy ounce.
9660-00-042-7733	Gold bullion/granules.....	Troy ounce.
9660-00-042-7765	Palladium granulations.....	Troy ounce.
9660-01-039-0320	Palladium sponge.....	Troy ounce.
9660-00-106-9432	Silver bullion/granules.....	Troy ounce.
9660-01-010-2625	Rhodium.....	Troy ounce.
9660-01-011-1937	Iridium sponge.....	Troy ounce.
9660-01-039-0313	Ruthenium sponge.....	Troy ounce.

If the required amount is available, forward a letter or TWX to DSCP-Y, requesting that the required quantity be reserved to cover the acquisition including the estimated delivery schedule.

(b) When a contract is awarded, a Military Standard Requisitioning and Issue Procedure (MILSTRIP) requisition is to be submitted to DSCP-Y. The requisition must cite full Troy ounces (partial ounces shall be rounded off to the nearest whole ounce). Exception data are to be cited. The exception data are: the exact "ship to" address (the Department of Defense Activity Address Directory (DoDAAD) sometimes cites post office boxes or is not always accurate); the contract number on which the precious metals are committed for use (this is necessary for control and audit purposes); the end item application, the NSN, the part number, or any other identifying data which is necessary in order that the precious metal may be recovered from the item when it reaches the end of its life cycle; and a contact point with phone number at the requisitioning activity (this is required in case it is necessary to resolve any problems).

(c) Transportation charges are included in the unit price. Transportation is usually accomplished by premium method (armored van); therefore, multiple requisitions to the same destination should be consolidated whenever possible. Delivery normally will be accomplished within 3 weeks after receipt of the requisition by the DSCP Inventory Manager.

SUBPART 90.5 - CONTRACT REVIEW PROCEDURES

90.501 Checklists.

The following contract review checklists have been developed for use as guides by DLA contracting officers and buyers in their individual contract reviews. The checklists may be modified to suit the needs of the contracting activity. Standard DLA-wide forms are not prescribed in order to permit development of local checklists.

(a) Contract review checklist - supplies/services.

CONTRACTOR: _____
CONTRACT NO.: _____ DOLLAR VALUE: \$ _____
BRIEF DESCRIPTION OF SUPPLIES OR SERVICES
QUANTITY UNIT PRICE EXTENSION
 \$ \$

1. Does the Center/Activity have the authority to purchase this item? (DFARS 208.70) YES NO N/A

TAB NO. 1 PR/MIPR

2. In file? (53.201-92(b)(3)(i))
3. Are amendments approved by appropriate authority and are they attached? (53.201-92(b)(3)(i))
4. Option quantity included? (FAR 17.202)

TAB NO. 2 SPECIFICATION/DRAWING

5. Is the purchase description prepared in accordance with FAR 11.000?

TAB NO. 3 ACQUISITION PLAN/AMENDMENTS (FAR/DFARS/DLAD 7.1)

6. Is information sufficient to support proposed method of acquisition (Sealed Bid - Competitive Proposals)? (FAR 6.401)
7. Was the acquisition plan approved at a level above the buyer in accordance with DLAD 7.102(91)?
8. Were market surveys and market research performed in accordance with DLAD 7.102(90)?
9. Is required delivery schedule realistic?
10. If option proposed, authorized/appropriate? (FAR 17.202)

TAB NO. 4 JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION:

11. Was contracting without providing for full and open competition justified? (FAR 6.303-1)

TAB NO. 5 DETERMINATION & FINDINGS

12. Was a justification for use of option prepared? (FAR 17.205(a))
13. If option is not to be evaluated, was a determination approved at a level above the contracting officer? (FAR 17.206(b))

14. If for full and open competition after exclusion of sources, was a D&F prepared? (FAR 6.202(b)(1))

TAB NO. 6 NONPERSONAL SERVICES DETERMINATION

15. If nonpersonal services involved, was determination issued? (53.201-92(b)(3)(iv))

TAB NO. 7 DOL WAGE DETERMINATION

16. Was a wage determination requested? YES NO N/A
(DLAD 53.201-92 (b)(3)(v))

17. If wage determination obtained, is it current or does file contain documentation authorizing extension?

TAB NO. 8 SMALL BUSINESS SET-ASIDE DETERMINATION

18. Does information provided support the determination? (FAR 19.501(c)/DLAD 53.201-92(b)(3)(vi))

19. Is withdrawal/modification of the initial set-aside determination explained? (FAR 19.506(c))

TAB NO. 9 BUY AMERICAN ACT

20. If applicable, has a nonavailability determination been prepared and approved pursuant to DFARS 225.102/DLAD 25.102?

TAB NO. 11 SOURCE LIST

21. List includes those initially solicited and those added as a result of requests, with dates for the latter? (53.201-92(b)(3)(vii))

22. Is the list excessively long? (FAR 14.205-4(a))

23. Is list annotated as to "no bids" received? (FAR/DLAD 14.205-2)

TAB NO. 12 PRESOLICITATION NOTICE

24. Should preinvitation notice (FAR 14.205-4(c)) or presolicitation notice (FAR 15.201(c)(5)) have been used?

25. Should draft RFP ((FAR?DLAD 15.201(c)(6)) have been used?

TAB NO. 13 SYNOPSIS

26. Copy of transmittal in file?

27. In proper format? (FAR 5.207/DFARS 205.207)

28. No synopsis; justification adequate? (FAR 5.202)

29. Was adequate time allowed? (FAR 5.203)

TAB NO.14 SOLICITATION & AMENDMENTS

30. Was solicitation issued in a timely manner?

31. Do solicitation provisions reflect PR/MIPR requirements?

32. If oral solicitation, does file contain justification for its use? (FAR 15.203(f))

33. Bidding time/RFP response time adequate? (FAR 5.203 and 14.202-1)

34. Format in accordance with FAR 14.201-1(IFB)
or 15.204-1(RFP)?

35. Were amendments sent to all originally solicited?
(FAR 14.208/15.206)

36. Were amendments properly dated? YES NO N/A
(DLAD 53.201-92 (b)(3)(viii))

37. Are solicitation clauses and provisions
current/complete? (FAR 14.201-6/15.209)

38. Does solicitation include evaluation factors?
(15.612-90(a)/15.304)

TAB NO. 18 ABSTRACT OF OFFERS

39. Abstract of bids/proposals: (FAR 14.403)

- (1) Signed and dated?
- (2) All bids/offers entered properly?
- (3) Exceptions noted? (53.201-92(b)(4)(i))

TAB NO. 19 PACKAGING/TRANSPORTATION/FREIGHT RATE DATA

40. Packaging/transportation/freight rate data obtained
and determined to be adequate? (53.201-92(b)(4)(ii))

TAB NO. 20 COST/PRICING DATA

41. Were cost or pricing data requested in the
solicitation? (FAR 15.403-5)

42. When cost or pricing data are required, has the
contracting officer obtained the Certificate of Current
Cost or Pricing Data? (FAR 15.406-2)

43. If cost or pricing data are not required but the **information other than cost or pricing needed to** has to help establish price reasonableness or cost realism? (FAR 15.404-3)

44. If cost or pricing data submitted, is it in file?

45. If cost or pricing data were required, has the
contracting officer indicated the extent to which
he/she has relied on the data and recognized as inaccurate,
incomplete or non-current any cost or pricing data
submitted? (FAR 15.406-3(a)(6))

46. If cost or pricing data were or were not requested,
does the file provide the exception used and basis for
it? (FAR 15.406-3(a)(5))

TAB NO. 21 AUDIT REPORT/WAIVER/FIELD PRICING REPORT

47. Was field pricing support obtained (DCAA audit;
DCAS pricing/technical report)? **FAR 15.404-2 and DFARS 215.404-2))**

48. If **so, does the file contain all pricing support information?** **FAR 15.406-2(b)(2))**

49. Was independent price analysis performed by the
cost/price analysis element? (15.404-1(a)(90))

TAB NO. 22 PRICE/COST ANALYSIS

50. If sole bid received, is the file documented to
reflect actions taken and rationale used to determine
the reasonableness of prices? (14.408-2(90))

51. Was weighted guidelines analysis prepared?
(FAR 15.404-4(c)(2)/ DFARS 215.404-71

52. If prior contracts were used in the price analysis, YES NO N/A

were the price reasonableness determinations of those contracts stated? (FAR/DLAD 15.404-1(b)(2)(ii))

53. Were realistic negotiation objectives established? (15.406-1)

TAB NO. 23 PRENEGOTIATION BRIEFING MEMO

54. Was prenegotiation briefing presented to appropriate authority prior to negotiations? (15.406-1(b)(91))

55. Does prenegotiation briefing memorandum clearly establish basis for negotiating position?

56. Does it include all of the required elements? (15.406-1(b)(92))

57. Was basis for decision to negotiate, or decision to accept the initial offer without discussion, documented? (FAR 15.306(a)(3) and DLAD 15.406-1(b)(92))

58. Is prenegotiation briefing memorandum signed and dated?

59. Was a comparative schedule (spread sheet) prepared as required by 15.406-1(b)(92)(4)?

60. If negotiation objectives were changed or exceeded, was prenegotiation briefing authority notified? (15.406-1(b)94)

TAB NO. 24 PRICE NEGOTIATION MEMO

61. Were negotiations conducted on an individual cost element basis?

62. Was option quantity considered in negotiations? (DLAD 15.403-4(a)(1)(i)(90) and 15.403-4(b)(90)(i))

63. Was rent-free use of Government property considered in the negotiations?

64. Was authority obtained for rent-free use from cognizant administrative contracting officer?

65. Was appropriate contract type selected?

66. Was common cutoff date for negotiations established with all offerors? (FAR 15.307(b))

67. Does price negotiation memorandum (PNM) format conform with FAR 15.406-3(a)/DFARS 215.406-3(a)/DLAD 15.406-3(a)?

68. Does the PNM clearly and conclusively support price reasonableness determination? (DLAD 15.406-3(a)(ii))

69. Is statement of same included in the PNM?

70. Is the PNM signed and dated?

TAB NO. 25 CERTIFICATE OF COST OR PRICING DATA

YES NO N/A

71. Was certificate of current cost or pricing data obtained? (FAR 15.406-2)

72. Were option requirements included?

TAB NO. 27 PREAWARD SURVEY/WAIVER

73. Was preaward survey conducted or a document executed by the contracting officer to not request

TAB NO. 28 EEO CLEARANCE

75. If \$1 million or more, was the equal employment opportunity clearance report obtained? (FAR 22.805(a))

76. Was evaluation conducted in accordance with solicitation criteria? (FAR 15.305(a))

TAB NO. 30 CAS COVERAGE

79. If a Disclosure Statement is required, did the contractor:

- TAB NO. 34 UNSUCCESSFUL BIDS/PROPOSALS

81. Nonresponsibility determination in file?
(FAR 9.105-2(a))

83. Were unsuccessful bidders/offerors notified promptly? (DLAD 14.409-1(b)/FAR 15.503)

TAB NO. 35 MISTAKE IN BID/PROPOSAL

86. Concurrence by counsel obtained? (FAR 14.407-3(f))

87. Disposition of late bids/proposals adequately documented? (FAR 14.304-3 and FAR 15.208)

88. Was the \$5 million Contract Announcement forwarded?
(FAR 5.303 /DFARS 205.303/DLAD 5.303)

89. Is DD Form 350, Individual Contracting Action Report, in the file? (DFARS 204.670-3)

TAB NO. 39 LOCAL CONTRACT REVIEW COMMENTS

90. Have all local CRO comments been addressed prior to forwarding for HQ DLA review? (DLAD 1.690-7(b))

SECTION C - OTHER SUPPORT DATA

91. Was a subcontracting plan for Small and Small Disadvantaged Business concerns obtained and approved, if required? (FAR 19.702)

92. If a plan was not obtained, was a determination made that subcontracting possibilities do not exist? (FAR 19.705-2(c))

93. If royalty payments involved, did General Counsel, HQ DLA concur? (FAR 27.204-1(b)/DLAD 27.000-90)

94. Should this item be referred to the Competition Advocate?

95. Is the contractor on the "Parties Excluded from Procurement Programs?" (FAR 9.405(b))

96. If a warranty provision contemplated, were the criteria of FAR 46.7 considered?

97. If provision for progress payments contemplated, is it appropriate? (FAR 32.501)

98. Were negotiations conducted with all responsible offerors within a competitive range? (FAR 15.306(d))

99. Were offerors notified of any changes in the Government's requirements? (FAR 15.206)

100. Were acknowledgments of changed requirements confirmed in writing by offerors? (FAR 14.303 and 15.411)

101. Were proposals marked with the date and time of receipt? (FAR 15.207(a))

102. Were requirements revalidated per DLAD 1.693?

TAB NO. 43 AWARD/CONTRACT AND CORRESPONDENCE

103. Was proper award document utilized (SF 26 - SF 33 - SF 1449)? (FAR 15.414)

104. Does contract agree in all respects with contractor's bid/proposal?

105. If single signature document, does it reflect contractor's letter/message amendments? YES NO N/A

106. Is arithmetic correct? (Extensions and totals)

107. Is contract being awarded within bid/proposal acceptance period? (FAR 14.408-1(a)/52.215-1(d))

108. Adequately funded? (FAR 32.702)

REMARKS: _____

(b) Contract review checklist - construction.

CONTRACTOR _____ DOLLAR VALUE\$ _____
CONTRACT NUMBER _____ PROJECT _____
LOCATION _____

1. Does the contract meet the criteria for a construction contract? (FAR 36.102) YES NO N/A

2. Have funds been approved under provisions of the annual Military Construction Appropriation Act? Is any other funding source appropriate?

3. Were sealed bidding procedures used? (FAR 36.103(a))

4. Were specifications prepared in accordance with FAR Part 11? (FAR 36.202)

5. Was an Independent Government Estimate prepared?

a. Was it prepared in as much detail as though the Government were competing for award? (FAR 36.203(a))

b. Was it marked FOUO prior to bid opening and was it filed with the other bids? Was the FOUO designation removed after bid opening? (DFARS 236.203(c))

c. Was the Government estimate recorded on the Abstract of Bids?

6. Did the advance notice and/or solicitation indicate the estimated price range of the procurement? (FAR 36.204)

7. Was a liquidated damages clause included in the contract? (DFARS 236.206)

8. Is a firm fixed-price contract anticipated? (FAR 36.207)

9. Were appropriate arrangements made for prospective offerors to inspect the work site and to have the opportunity to examine data? Was a record kept of the identities and affiliations of those who inspected the work site? Did the solicitation contain a site inspection provision?

10. Was a presolicitation notice issued? (FAR 36.302)

11. Was the presolicitation notice synopsized? (FAR 5.204)

12. Was a wage determination issued? Did the specifications include same? (FAR 36.303(c)(1))

13. Was SF 308, Request for Determination and Response to Request, used to request an installation or individual wage determination? YES NO N/A

14. Are modifications to the DOL determination time-date stamped?

15. If an amendment to the wage rate was issued, were procedures for amending the solicitation followed?

16. Was adequate time allowed between issuing and opening the solicitation? (FAR 36.303(a))

17. Did the solicitation contain all the information required by FAR 36.303(c)(1) through (10)?

(a) wage determination

(b) clause at FAR 52.236-1, Performance of Work by the Contractor

(c) magnitude of the construction

(d) period of performance

- (e) site inspection arrangements
 - (f) information concerning facilities
 - (g) information concerning prebid conference
 - (h) special qualification or experience
 - (i) reporting requirements
18. Were the clauses prescribed by FAR 36.501 through 36.521, and DFARS 236.570 included, as appropriate?
19. Did the solicitation specify the requirement for bonds, the penal sum for each bond, and the deadlines for submitting acceptable bonds? (FAR 28.102-2 and 28.102-3)
20. Was an adequate bid bond submitted with the bid?
21. Are the bid bonds signed by an agent of an approved corporate surety listed in the Treasury circular?
22. Was the original of the bonds submitted with the bid?
23. Are the penal amounts of performance and payment bonds correct? (FAR 28.102-2(a)(1) and (b)(1))
24. Were bid bonds and performance and payment bonds considered in the determination of responsibility?
25. Were performance evaluation reports used in making the determination of responsibility? (DFARS 236.201(c)(2))
26. If prequalification was used, was the approval of the HCA obtained? (DFARS 236.272)
27. If more than one item is subject to statutory cost limitation, is a separate schedule provided. Is the bid unbalanced? (FAR 36.205)
28. Does the notice of award include the information prescribed by FAR 36.304?
- YES NO N/A
- a. Identify the invitation for bids.
 - b. Identify the contractor's bid.
 - c. State the award price.
 - d. Advise contractor that required payment and performance bonds must be promptly executed and returned to the contracting office.
 - e. Specify the date of commencement of work, or advise that a notice to proceed will be issued.
29. Are the prescribed forms for construction contracts used? (FAR 53.236-1) (See also FAR 53.301-24, 53.301-25, and 53.301-25-A)
- a. SF 1417, Pre-Solicitation Notice (Construction Contract)
 - b. SF 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair)
30. If period of performance is more than one month, are progress payments authorized?
31. Was the clause at DFARS 252.232-5 included for progress payments? (~~FAR~~ 32.111(a)(5))

32. Is a construction warranty clause approved for usage? (FAR 46.710(e)(1))
33. Does the small or small disadvantaged business concern meet the size standards of FAR 19.102?
34. Is the required insurance clause in the contract? (FAR 28.3, 52.228-5)
35. Are specific affirmative action goals for the geographical area established? If not known, have instructions been requested from **DLSC-P/DCMC-O**? (FAR 22.804)
36. Has all Government-furnished property been described in detail in the schedule?
37. Has the solicitation been totally set-aside for small business and appropriate clauses included for procurements estimated below \$2 million? (DFARS 219.502-2)
38. Have the potential offerors been allowed enough time to submit bids? (i.e., 30 days minimum, or a justification to reduce the bidding time made by the contracting officer) (FAR 14.202-1)
39. If funds are contingent upon the availability of another fiscal year funding, does the solicitation contain the proper clauses pertaining to the Funds Availability? (FAR 32.705-1(a))
40. Has a qualified COR/COTR been assigned?

SUBPART 90.6 - GUIDANCE FOR CONTRACTING OFFICERS' REPRESENTATIVES
AND CONTRACTING OFFICERS' TECHNICAL REPRESENTATIVES

90.601 General.

This subpart provides Defense Logistics Agency (DLA) Contracting Officers' Representatives (CORs) and Contracting Officers' Technical Representatives (COTRs) a reference on many of the factors that surround their duties. Included are definitions of key terms, a brief summary of the environment in which the COR/COTR works, responsibilities of each of the participants in the acquisition process, and other information to assist CORs/COTRs in accomplishing their duties successfully. It is important for all to understand that this is only a guide. Recommendations on improving Subpart 90.6 may be provided to **DLSC-POA**.

90.601-1 Reserved.

90.601-2 Acquisition process in DLA.

The acquisition process in DLA consists of four phases: The requirements determination phase, the specifications/statement of work (SOW) phase, the contracting phase, and the contract administration phase. A brief narrative on these four phases follows. The length of time it takes to complete a project from beginning to end depends on the complexity of the project. In some instances a project can take several years.

(a) Requirements Determination Phase. The requirements determination phase begins with identification of a need. In this phase, boundaries for the project, milestones, and source selection procedures are established. If necessary, the acquisition planning team is formed during this phase to oversee the project. The acquisition planning team normally consists of customer and technical personnel, budget personnel, and a representative from contracting. Soon after this team is formed and funding is provided, the specifications/SOW phase begins.

(b) Specifications/SOW Phase. The second phase is the development of the description of needs. During this phase members of the acquisition planning team draft specifications, purchase descriptions or other similar descriptions, and/or a statement

of work. Technical evaluation factors are developed and milestones are updated during this period prior to moving forward to the third phase, contracting.

(c) Contracting Phase. The contracting phase includes preparation of the solicitation, evaluation of offers, contract negotiation (if applicable), and award of the contract.

(d) Contract Administration Phase. This phase begins with award of the contract and includes: delivery of supplies, and/or completion of performance of services; and partial, progress, and final payments to the contractor; all administrative actions; and contract closeout denoting the end of the phase.

90.601-3 The contract.

A Government contract is a document containing the rights and responsibilities of both the Government and the contractor. For ease of reference, most Department of Defense (DoD) contracts are structured as follows:

Section Title

Part I The Schedule

A	Solicitation/contract form
B	Supplies or services and prices/ costs .
C	Description/specifications / SOW
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements

Part II - Contract Clauses

I Contract clauses.

Part III - List of Documents, Exhibits, and Other Attachments

J List of attachments

Part IV - Representations and Instructions

K Representations, certifications, and other statements of Offerors **or respondents**.

L Instructions, conditions, and notices to offerors or **respondents**.

M Evaluation factors for award.

90.602 Specific information concerning CORs and COTRs.

90.602-1 Reserved.

90.602-2 Definitions.

(a) Contracting Officer's Representative (COR). The individual designated in writing by the contracting officer to act as the contracting officer's authorized representative to monitor specific aspects of the contract and take action as authorized in the letter of appointment. The COR, when one is appointed, acts as the point of contact between the contracting officer and the COTR assigned to the contract. COR responsibilities and limitations are established by the contracting officer.

(b) Contracting Officer's Technical Representative (COTR). The individual designated by the contracting officer to act as the contracting officer's authorized representative for technical aspects of the contract. The COTR reports to and assists the COR, when one is appointed, in providing technical oversight of the contractor's performance. COTR responsibilities and limitations are established by the contracting officer. In the event that a COR is not designated and only a COTR is appointed, the COTR shall report directly to the contracting officer.

90.602-3 Designation of the COR/COTR.

(a) The contracting officer may select and designate any Government employee, military or civilian, to act as the contracting officer's authorized representative as a COR/COTR on a contract subject to the authority and limitations outlined in the letter of appointment. In selecting an individual as an authorized representative, the contracting officer shall ensure that the individual possesses qualifications, **training** and experience commensurate with the authority which the COR/COTR will exercise. **All CORs/COTRs shall complete approved training prior to being issued a letter of appointment (see DLAD 1.603-93(a)). Local training coordinators should be consulted for sources of approved COR/COTR training courses.**

(b) A COR/COTR shall be designated by name and position title. In accordance with 1.603-91(a) each designation of a COR/COTR shall be in writing and shall clearly define the scope and limitations of authority. The extent of the authority and limitations of the COR/COTR for each individual contract is determined by the letter of appointment from the contracting officer. Changes in the scope and limitation of authority may be made either by issuing a new designation or by amending the existing designation. When one COR/COTR is appointed for more than one contract, separate designations shall be issued for each contract. A copy of each appointment letter shall be forwarded to the applicable payment office(s) when the COR/COTR is authorized to certify invoices for payment. This copy shall be annotated with the COR/COTR's address and telephone number if this information is not readily apparent in the letter.

(c) A designation of a COR/COTR shall remain in effect through the life of the contract unless revoked by the contracting officer, the contracting officer's successor, or in the event of reassignment of the individual designated.

(d) The contracting officer shall be notified immediately in writing, by the COR's/COTR/s immediate supervisor, if the individual appointed as COR/COTR is transferred, reassigned, will be absent for an extended period, or is otherwise unable to fulfill the responsibilities of the position.

90.602-4 Responsibilities of the COR.

(a) Planning. The individual rights and obligations of both the contractor and the Government should be clearly established by the contract terms. Often the action of one party to the contract affects the other party; therefore, planning is necessary before performance begins to integrate the actions of both parties. For example, if the contract specifies that property or services are to be supplied by the Government, the COR must ensure delivery of such Government-furnished property or services. The Government's responsibility for other actions such as the approval of plans, comments on draft reports, performance of tests and evaluation, and provision of technical information to the contractor requires the Government to share in the responsibility for contract completion. The Government must be responsive and act in a responsible manner. Delays or omissions by Government personnel in performing reviews, giving approvals or disapprovals, or furnishing required information may entitle the contractor to an equitable adjustment as provided for in the contract.

(b) General Responsibilities. Responsibilities of the COR vary with the type of contract and complexity of the acquisition. For a contract of any complexity, the COR has many duties, including: monitoring of progress and performance by the contractor, controlling of Government property and facilities, where necessary, recommending contract modifications and terminations, certifying receipt of supplies/services, and accomplishing other tasks required by the contract or the contracting officer. In fulfilling the responsibilities, the contracting officer shall require the COR to:

(1) Read and maintain a copy of the contract provided by the contracting officer together with contract modifications which may be issued;

(2) Become thoroughly familiar with the terms and conditions of the contract to assure compliance with the provisions contained therein; and

(3) Promptly inform the contracting officer of any delay in the progress of work or any problem encountered that may require a contract modification or other administrative action.

(c) Specific Responsibilities. Each contract must be treated on an individual basis, because it may place responsibilities on the COR unique to that contract. Specific responsibilities that CORs perform on nearly every contract are addressed below, but no list could be all-inclusive. CORs should note specific responsibilities outlined in the COR/COTR letters of appointment and pay particular attention to limitations on their authority.

(d) Monitor Technical Compliance. The COR must ensure that the contractor complies with all technical requirements of the contract, including the submission of required reports or other documentation. In this function the COR shall:

(1) Notify the contracting officer of potential or actual performance problems and recommend remedial action. If verbal notification is given to the contractor, the COR shall follow this up in writing to the contracting officer. COTRs have a corresponding duty to inform CORs.

(2) Assist in meeting the Government's contractual obligations to the contractor. This includes, but is not limited to, arranging to supply Government-furnished equipment, facilities, and services called for in the contract and providing timely Government comment on, or inspection/acceptance of, draft/final contract deliverables if required by the contracting officer or contract. Section E of the contract provides information on inspections and acceptance. In the case of purchase orders, the body of the order contains this information.

(3) Report any instance of suspected conflict of interest or fraud, waste, and abuse to the local Office of General Counsel that supports the contracting officer.

(4) Inform the contracting officer in writing of any needed change in the scope of work in the contract so that a modification may be issued, as appropriate.

(5) Report all unacceptable deliverables. If the work is deemed unsatisfactory, the COR shall report all deficiencies in writing to the contracting officer who will determine what further actions are required.

(6) Report all acceptable deliverables. The COR shall provide written notification to the contracting officer when the contractual requirements have been fulfilled and are technically acceptable. The evaluation of contractor performance may be documented on either a DD Form 250, a letter of acceptance, or the verification of receipt on a commercial invoice. The verification of receipt on the invoice or on the DD Form 250 is the most common form of documenting acceptance. These documents also serve as instruments in making payment. The disbursing office (the office that pays the contractor) will be identified in the contract. A copy of the contract and records of any payment made on the contract will be on file at that disbursing office. Although contractors send invoices directly to the disbursing office, the disbursing office will not make payment without the signature of an individual authorized to certify that the invoice is proper. It is the COR's responsibility to certify that the services/supplies have been received and are acceptable.

(7) Provide technical interpretation of the requirements. As previously discussed, the COR must have a thorough understanding of the requirements of the contract. It may become necessary to provide technical interpretation to the contractor for some portion of the work. The COR is encouraged to call upon other technical personnel to assist COTRs for this purpose. Where there is no appointed COTR, the COR is authorized to provide the assistance to the contractor on technical matters within the scope of the contract. Any technical assistance given to the contractor by the COR/COTR should be documented in the contract file. For significant matters, the information should be provided to the contractor in writing. The COR shall notify the contracting officer immediately whenever the contractor disagrees with or refuses to comply with any technical aspects of the contract as interpreted by the COR. The contracting officer shall provide final resolution in cases of disagreement between the COR/COTR and the contractor.

(8) Request deobligation of excess funds. A contracting officer who is not located at the place of performance may not be aware of contingencies which develop during the life of the contract and may require the deobligation of funds. The COR who is certifying receipt of supplies/services can compare expenditures with funds obligated on the contract. The procedure for requesting the deobligation of funds is to notify the contracting officer by letter that there are excess funds on the contract. Funds can be deobligated from a contract only by a contract modification signed by the contracting officer. The modification will inform the Comptroller that money has been deobligated and, therefore, can be decommitted.

90.602-5 Responsibilities of the COTR.

(a) General Responsibilities. The general responsibilities of the COR and COTR are similar, but the COTR reports to the COR, and the COR reports to the contracting officer, when appointed. The COTR's function is to act as the technical advisor to the COR when

appointed. When a COR is not appointed, the COTR reports directly to the contracting officer.

(1) Assure that the COR has an understanding of individual responsibilities and working arrangements. Such discussions are necessary immediately after appointment and are appropriate at any time during the period of contract performance;

(2) Arrange a schedule with the COR to monitor contractual requirements. The contracting officer must be promptly informed of delays in progress of work and of any problem encountered that may require a contract modification or other administrative action;

(3) Become knowledgeable of the duties and functions of the COR; and

(4) Inform the COR of any disagreements with the contractor regarding technical interpretation of the contract.

(b) Specific Responsibilities. The specific responsibilities of the COTR will vary with each contract. COTRs should become familiar with all responsibilities outlined in the COTR letter of appointment and with the limitations on their authority. If authorized by the contracting officer, it is the COR's responsibility to determine when the work is complete and conforms with the technical requirements of the contract. However, the COTR will often be delegated this responsibility when technical expertise is needed. The COTR is not authorized to execute DD Form 250 or any other formal written acceptance unless the COTR has been specifically designated the authority to do so in writing. The COTR may be required to assist the COR with inspections or evaluations required by the contract.

90.602-6 Limitations on the authority of the COR/COTR.

(a) The authority vested in a COR/COTR is subject to the following limitations: The COR/COTR is not empowered to sign any contract, including delivery orders, purchase orders, or communication service authorizations (CSAs), or to modify a contract, or in any way obligate payment of funds by the Government. The CORs/COTRs may not take any action which may have an impact on contract or delivery order schedules, funds, or scope of work. All contractual agreements, commitments or modifications which involve prices, quantities, quality, or delivery schedules shall be made only by the contracting officer.

(b) While the COR/COTR limitations can be simply stated, assuring that the COR/COTR does not exceed the authority granted is much more complex. In the course of performing COR/COTR responsibilities, situations may result in an implied change to the contract which, in turn, may impact the delivery schedule, funds, or other areas outside the authority of the COR/COTR. These examples illustrate that the COR/COTR may exceed the scope of their authority by inaction or improper action. Two examples illustrate this point.

(1) Example 1: A user calls a COR and states that there is an insufficient number of copies of documentation delivered by the contractor. Certainly, it is within the realm of the COR's authority to advise the contractor that the required number of deliverables were not shipped/received. The COR notifies the contractor that additional copies must be provided to satisfy contractual requirements. The contractor delivers the quantity of documentation in accordance with the COR's instructions and submits an invoice for extra copies of the documentation. It is then discovered that the contractor had originally delivered the number of copies required by the contract. The COR's failure to review the contract prior to requesting additional copies has caused the COR to proceed beyond the authorized limitations and created a situation in which the Government may have to pay for the additional goods through ratification of the COR's unauthorized act. Further, the COR could incur a personal liability even though the COR may not have taken action which could be binding on the Government.

(2) Example 2: An individual is designated as COR on a contract for the installation of equipment. The equipment is scheduled for delivery the next month. The COR sets up a COR file and places the file in the filing cabinet after noting the scheduled installation date on the calendar. The installation day arrives, and the contractor, as promised, arrives with the equipment. However, it cannot be installed because the COR did not insure that the Government had done its part by installing an electrical outlet and raised floors. By inaction, the COR has allowed a potential claim to be made for Government-caused delay. In summary, the COR/COTR is not authorized to:

(i) Alter the contract in any way, either directly or by implication;

- (ii) Issue instructions to the contractor to start or stop work. Only the contracting officer may do this;
- (iii) Order or accept goods or services not expressly required by the contract;
- (iv) Render a decision under the Disputes clause;
- (v) Authorize delivery or disposition of Government property not authorized by the contract; and
- (vi) Discuss acquisition plans or provide any advance information that might give one contractor an advantage over another contractor in forthcoming procurements.

90.603 COR/COTR files.

90.603-1 Contents of the COR/COTR files.

(a) The COR/COTR is required to document all actions taken in regard to the contract. To the extent that contractual documents and correspondence do not explain all actions taken, suitable records must be prepared promptly and placed in the official COR/COTR file. The importance of maintaining complete and orderly files cannot be overemphasized, and it is critical to transfer of responsibility if the COR/COTR is changed during the term of the contract.

(b) As a matter of practice, the COR holding discussions or conducting business with contractors shall prepare Memoranda for Record (MFRs) of meetings, trips, and telephone conversations relating to the contract. Each MFR, other similar records, and correspondence relating to the contract shall cite the contract number. A copy of all actions or correspondence shall be furnished to the contracting officer and all other interested parties having a need to know. Documents that may contain contractor proprietary data or other business-sensitive information should not be released outside the Government without approval of the contracting officer.

(c) Duplicate copies of file documents shall be destroyed as soon as they have served their purpose, but in no event shall such documents be retained for longer than 1 year after acceptance of the final deliverable under the contract.

(d) Records pertinent to unsettled claims for or against the United States, open investigations, cases under litigation, or similar matters shall be preserved until final clearance or settlement of the matters even though retention of these records may exceed a period longer than 6 years and 3 months after final payment.

(e) CORs shall forward any correspondence received from the contractor to the contracting officer.

90.603-2 Required documents.

The following documents are required for the effective performance of COR/COTR functions and to establish the official COR/COTR file. Both the COR and COTR keep separate files of their own.

- (a) Contract and modifications thereto;
- (b) COR/COTR letter of appointment and any correspondence from the contracting officer which amends the letter of appointment;
- (c) For CORs, the names of technical and administrative personnel (e.g., COTRs);
- (d) Statement indicating that the COR/COTR has read and understands DLAD 5500.1, Standards of Conduct;
- (e) Records of COR/COTR inspections and all receiving and acceptance documents;
- (f) Correspondence to and from the contracting officer and the contractor;
- (g) Memoranda of phone conversations, meetings, and discussions relating to the contract;
- (h) Progress reports;
- (i) Inspection and evaluation reports; and

(j) Any other document pertaining to the contract.

90.603-3 Disposition of completed COR/COTR files.

Since the COR/COTR is an authorized representative of the contracting officer, the COR's/COTR's records are a part of the official postaward contract files and shall be forwarded to the contracting officer for retirement with the official contract file upon completion of the contract. Documents which pertain to the contract shall be clearly identified when forwarded to the contracting officer.

SUBPART 90.7 - DAR CASE FORMAT

90.700 Scope of subpart. This subpart prescribes a uniform structure for all cases submitted to the DAR Council for formal consideration.

90.701 Purpose. The case format serves two important functions. First, the prescribed structure for presenting the proposed case provides a very useful and clear exposition of the issues to assist the DAR Council in considering cases in a timely and efficient manner. By clearly setting out how the current regulations are perceived to be inadequate and the specific changes that will remedy the described situation, the case structure minimizes misunderstandings and helps avoid the delay that necessarily results when additional information or clarification is required from the party initiating a case. Second, the mandatory minimal information is necessary to comply with various Federal statutes, Executive Orders, or higher level regulations that require those who propose rules, either initially or by way of revision to existing regulations, to analyze and attempt to mitigate the burdens which the proposed rules may place on the public in general, and small businesses in particular. The case format appropriately places initial responsibility for identifying and considering those burdens on the party proposing that the FAR or DFARS be amended. For these reasons, cases that do not follow the prescribed format will be returned with appropriate guidance to the initiator.

90.702 Case format. Every DAR case recommending an amendment to the FAR or the DFARS will consist of at least two parts: The statement of the case, and the two essential attachments discussed at 90.703-2. The initiator should provide any additional attachments or other documents which would be helpful to a more complete understanding of the issues.

90.703 Case statement. The statement of the case shall be in the form of a memorandum, without signature block, to the Director, DAR Council; be in the format of: I. Problem; II. Recommendation; and III. Discussion, and be forwarded via a cover letter signed by the chief of the contracting office to HQ DLA, ATTN: **DLSC**-PPP.

90.703-1 Problem section. The Problem section should succinctly discuss an existing problem in the procurement process. A simple statement that some part of the FAR or DFARS should be changed, however, is not an adequate description of a problem upon which the DAR Council will act. As the foundation for every DAR case, the statement of the problem should convey as accurately and completely as possible the factual or legal reasons necessitating regulatory revision.

90.703-2 Recommendation section. The Recommendation section consists of two elements: Citation of the specific language to be added, deleted, or revised in the FAR or DFARS (TAB A of the DAR case memorandum), and citation of certain documentation responsive to four collateral requirements mandated by Federal statutes, Executive Orders, and higher level regulations (TAB B of the DAR case memorandum). TAB A shall set forth as much of the pertinent section or paragraph of the FAR or the DFARS as is necessary to show the desired change in context. The language to be added should be enclosed in brackets and any deletions should be shown as lined through. TAB B shall contain the elements described as collateral requirements. (See DLA-PPR letter, 23 Jun 87, Subject: DAR Case Preparation Guidance, Enclosure 2.)

90.703-3 Discussion section. The Discussion section should provide any background information, including prior DAR cases that are relevant to the current issues, which will assist the DAR Council in understanding the problem. This section should also demonstrate clearly how the recommended revisions to the FAR or DFARS will solve the problem identified. While the discussion should be succinct and to the point, if the initiator believes the recommendations may have side effects or disadvantages that are pertinent to the DAR Council's consideration, these should be addressed. Though the FAR and DFARS iterates the policy not "...to stifle the development of new techniques or methods of procurement," cases should not be proposed which cannot be justified in terms of administrative effort or expenditure of Government resources. Accordingly, the

Discussion section of the case shall include a justification that considers the full operations of the regulatory process, including HQ DLA review, committee analysis, DAR Council analysis, CAA Council analysis, publication for comment and review of comments, and other applicable steps.

90.704 Deviations. To encourage desirable innovation in procurement methods and techniques, **the Director, Defense Procurement, on a test basis, has granted approval authority for certain class deviations from the FAR and the DFARS to the Commander, DCMC (the Senior Procurement Executive). This authority does not extend to (1) deviations identified in DFARS 201.402(1)(i); or (2) deviations that have a significant effect beyond the internal operating procedures of your department or agency or have a significant cost or administrative impact on contractors or offerors, including any deviation that tends to diminish any preference accorded small businesses by the FAR or DFARS. This authority does not extend to requirements imposed by statute or directives of other agencies, such as the Small Business Administration and the Department of Labor, that have statutory or executive regulatory authority.**

Requests for approval of a class deviation by the Commander, DCMC shall contain Problem, Recommendation and Discussion sections that adequately demonstrate a need for, and estimate the duration of, the deviation (see 90.703), and be forwarded to HQ DLA, ATTN: **DLSC**-PPP, via a cover letter signed by the chief of the contracting office. In addition, DFARS 201.402(3) prescribes certain specific types of information which must be supplied in support of any requested deviation.

Deviation requests should be written as persuasively as possible. Initiators should address the regulation as it is currently written and specify what needs to be changed to institute or to continue their required practices; describe the peculiarities of their situation that make the deviation necessary; what alternatives have been tried or considered to avoid the deviations; and why the deviation is the best choice. In the case of extension requests, either propose a permanent change or describe efforts made to alleviate the need for the deviation.

SUBPART 90.9 - UPDATING SMALL DISADVANTAGED BUSINESS STATUS AND WOMEN-OWNED BUSINESS STATUS IN THE DD 350

90.901 Reporting requirement.

When entering the DD Form 350 CAGE Code, if either the small disadvantaged business status or the women-owned business status in the DLA Contract Action Reporting System (DCARS) is incorrect, the DCARS CAGE file must be updated before the DD Form 350 can be entered. A completed report format (see 90.902) shall be submitted by mail or facsimile transmission to HQ DLA, ATTN: **DLSC**-POA. Use of the format is mandatory; variations will be accepted on a case-by-case basis if submitted with a complete justification for the variance. Submissions may be typed or legibly handsigned. All submissions require the signature of the activity Small and Disadvantaged Business Utilization Specialist (SADBUS). Within two working days after the DCARS update is processed, a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, shall be submitted to the **Defense Logistics Information Service (DLIS-FEB)**.

90.902 Report format.

TO: DEFENSE LOGISTICS AGENCY
ATTN: **DLSC**-POA
8725 JOHN J. KINGMAN ROAD
FT. BELVOIR, VA 22060-6221

DATE:

FROM:

REQUEST THE FOLLOWING CHANGE(S)/ADDITION(S) BE MADE TO THE **DLSC**-POA CAGE FILE:

CHANGE_____	ADDITION_____		
DISADV N OR L	WOMEN N OR L	MANUFACTURER'S NAME & ADDRESS	CAGE CODE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

N = NO L = YES CHANGE = AN EXISTING CAGE RECORD IS TO BE CHANGED AS INDICATED ADDITION =
CAGE RECORD IS NOT YET ON THE DLA FILE AS IT WAS RECENTLY ASSIGNED BY DLSC IN RESPONSE TO
AN EMERGENCY REQUEST (USED RARELY)

ACTION OFFICE REPRESENTATIVE SIGNATURE _____

ACTIVITY SMALL BUSINESS SPECIALIST SIGNATURE _____

THIS FORM MUST BE RECEIVED IN **DLSC**-POA PRIOR TO FILE UPDATES.

SUBPART 90.10 - ADMINISTRATION OF DLAD

90.1001 Administration and explanation.

The administration and explanation of the DLAD is the responsibility of the Executive Director, Procurement Management, HQ DLA, **DLSC**-P.

SUBPART 90.11 - ACQUISITION PLANNING

90.1101 Contents of written acquisition plans. (See corresponding paragraphs of FAR 7.105.)

(a) Acquisition background and objectives.

(1) Statement of need. The statement of need shall include:

(i) The nomenclature, a brief nontechnical description, and general statement of use or purpose the acquisition is intended to satisfy.

(ii) Identification of requiring activity.

(iii) A statement as to whether or not the supplies are stocked.

(2) The technical and contractual history shall include:

(i) A description of efforts to:

(A) Facilitate the use of commercial items (e.g., removing unnecessarily restrictive features of requirements documents).

(B) Obtain/acquire/develop a complete technical data package free of proprietary rights suitable for full and open competition; or

(C) Have restrictive features of specifications removed; or

(D) Develop a clear, unambiguous statement of work.

(ii) Contract performance history for the same or similar supplies or services, e.g., name(s) of contractors(s), type of contracts, dollar value, degree of competition, acquisition authority, award date, unit price, contractor size status, contractor performance history (including delivery and quality performance) and significant problems encountered (customer complaints, nature of protests or Congressional inquiries).

(iii) Discussion of previous APEC reviews.

(3) Cost. Provide the estimated dollar value of the acquisition, the quantity proposed to be acquired, and the anticipated unit price.

(5) Delivery or performance-period requirements. Provide estimates of production lead times. Describe whether supplies or services are required by specified times to

support other supplies, services, systems, or program requirements. Describe management considerations of the supplies, as appropriate, e.g., depot capabilities, stock rotational requirements, and shelf life. Describe production surveillance reporting requirements.

(b) Plan of action.

(1) Sources. Discuss the nature, extent, and results of the market survey and any market research performed or requested in support of the acquisition strategy developed (see also FAR Part 10 and state whether the acquisition will be conducted under FAR Part 12).

(2) Competition.

(i) Discuss alternative supplies, services, systems or programs which could be acquired using full and open competition if use of full and open competition is not planned. If appropriate, discuss the tradeoffs of use of such substitutes in terms of price differences, quality, and acquisition and production lead time. Discuss alternative acquisition strategies which have been considered or could be used to provide for increased competition.

(90) Describe the Activity Competition Advocate's (see FAR 6.5) actions to date relative to the supplies/services proposed to be acquired including: description of efforts to have restrictive aspects of specifications, technical data, or statements of work revised/deleted; a summary of discussions with the Military Departments, or other requiring activity, and industry relative to alternatives to increase competition. Discuss feasibility of use of full and open competition with exclusion of a source to establish an alternative source or sources (FAR 6.202(a)).

(91) Describe strategies for developing/achieving competition for current and future acquisitions.

(92) Identify sources to be solicited. Discuss efforts/plans for developing or locating additional sources, including discussions with industry, trade associations, use of presolicitation notices, and advance notices in the Commerce Business Daily.

(93) Include the Activity Competition Advocate's comments on the plan.

(b)(4) Contracting considerations. Discuss applicability of socioeconomic requirements, e.g., small business set-asides, 8(a), and minority-owned business, **empowerment contracting**, and results of discussions with Small and Disadvantaged Business Utilization representatives. **Also consider use of such sources as Javits-Wagner-O'Day Act- (JWOD-) qualified agencies for the blind or other severely disabled.** Discuss any pertinent foreign purchase/sales matters. Discuss applicability of progress payments, economic price adjustments, bid guarantees, or performance bonds.

(5) Budgeting and funding. Describe the type of funds, stock funds or operations and maintenance funds, which are proposed to be used for the acquisition.

(6) Requirements documents. Discuss the basis for the decision to use the requirements document(s) being used for this acquisition. Provide a copy of the requirements document(s) to be used. Discuss commercial equivalency. If interim requirements documents descriptions are proposed, provide estimated completion date and any pertinent industry comments to date. Discuss previous problems with requirements document(s) and efforts made to resolve those problems. Explain the nature of patents, copyrights, or proprietary data. Identify plans to acquire rights to data.

(12) Test and evaluation. Describe requirements for use of, or plans to use, qualified products lists, qualified manufacturers lists, or other qualification requirements (see FAR Subpart 9.2). Provide the number of products/sources on such lists. Describe plans for qualifying additional products/sources. Discuss methods to be used to determine quality/compliance with requirements, e.g., first article test requirements, production test, in-process surveillance, inspection and acceptance criteria, or any other special test requirement. Discuss alternatives to the above and criteria for waiving same. Describe production surveillance and any production progress reporting requirements. Describe any requirements for certification, licensing, or approval by Government control agencies. Discuss any use of Certificate of Conformance or Certificate of Quality Compliance.

(13) Logistics considerations.

(90) Describe phaseout and disposition plans for any current or due-in stocks for supplies being replaced.

(91) Include projected annual requirements, stock levels planned, feasible alternatives to those levels, and acquisition cycle. Describe mobilization requirements, if applicable. (See Subpart 17.93)

(14) Government-furnished property. Discuss the rationale for use of any Government-furnished material (GFM).

(18) Other considerations. Provide requirements necessary to maintain a mobilization base, if applicable. (See Subpart 17.93) Discuss the plan for identifying/establishing industrial preparedness planned producers and obtaining industrial preparedness agreements. Discuss any environmental considerations. Include DLA Form 1664, Record of Determination - Environmental Evaluation, to indicate whether an environmental document is required in accordance with DLAD 1000.22, Environmental Considerations in DLA Actions in the United States. Contracting actions involving significant quantities of toxic and hazardous chemicals, pesticides, radioactive items, fossil fuels, or animal products made from endangered species are not categorically excluded under DLAD 1000.22 and require preparation and submission of an environmental document to accompany the acquisition plan.

(19) Depot, ICP, DCMC, and Military Service Component Impact Statement. As part of acquisition plans, attach copies of Depot, DLA ICP, DCMC, and Military Service component impact statement(s) which address the downstream effects of implementing prime vendor arrangements, direct vendor delivery, vendor managed inventory or any other strategy that affects depots traditional functions, or workload/resources at DLA ICPs, DCMC organizations, or Military Service components.

(1) If possible, this effect should be quantified in terms of the number of NSNs that will no longer be processed by the depots, the amount of storage space that will become available for other uses, and the timeframe over which these items will no longer be shipped to depots (show number of NSNs for each time period). The decision to convert to DVD should be explained as being economically sound for the ICP/Agency (including quantitative justification), or required as a performance objective of the acquisition and resultant contract, (e.g., because the customers delivery requirements dictate DVD support), or as contributing to Agency success in achieving goals set by Congress, OSD, or other policy-making entities.

(2) Additionally, acquisition plans should list any FSCs or NSNs included in the proposed contracting instrument that are assigned for management by an ICP other than the one executing the contract, and provide documentation that the other DLA Center(s) is aware of the proposed contract coverage, timetable, and inventory drawdown. An explanation of the reasons for including the NSNs in the proposed contract should be provided (i.e., natural/traditional fit within the industry, allows total logistics support to a particular customer, etc.). Plans should also address whether Center resource managers and union representatives have been apprised of any potential workforce implications. Acquisition plans should address/include plans for accommodating any potential workforce impact (e.g., retraining).

(3) Plans should include an assessment of potential impact to DCMC workload and identify the milestone date by which DCMC will be apprised of this potential impact (e.g., no need for QARs where there was previous need, no DD250s to be processed for acceptance, etc.). This date should allow DCMC sufficient time to plan for any resource impact.

(4) Plans should include an assessment of potential impact to Military Service component(s) and verification that the Service has been apprised of this potential impact.

90.1102 An illustrative acquisition plan format is provided as follows:

ACQUISITION PLAN

PR/MIPR Number:.....Date Received:.....Buyer:.....

Item Description:.....Delivery Schedule:.....

Quantity:.....Est. Unit Price:.....Est. Total Price:.....

Supply Criticality (Priority):.....

Purchase History

Date Quantity Unit Price Method of Acquisition Competitive Offers
____ _____ _____ Sealed Bid____ Neg____ No.____\$Range____

Considerations

100% Partial None Partial None
Set-Aside: Small
 Business
 Small Disadvantaged
 Business

Quantity/Period Option: (% or period) Price Escalation: %

Progress Payments: prior buys (Y or N) current buy (Y or N)

First Article Test: _____

Request for Exception Not Required
Cost/Pricing Open
Data: Contracts:....
Warranty: YesNo GFP Involved:YesNo

Proposed Method of Acquisition

- a. Sealed Bid
- b. Negotiation WrittenOral.....

Rationale for Not Using Sealed Bidding:

/ / Time does not permit solicitation, submission, and evaluation of sealed bids.

/ / Award will be made on a basis of other than price and other price-related factors alone.

/ / It is necessary to conduct discussions with offerors about their offers.

/ / A reasonable expectation of receiving more than one sealed bid does not exist.

Type contract/order contemplated._____ If fixed-price with economic price
adjustment, specify EPA clause number/title _____
and (if applicable) index source, number, and name
_____.

Market Survey Results

Discuss nature and results of market survey: _____

Market Research

Discuss purpose, nature, extent, involved personnel/offices and results/status and
estimated completion date of any market research initiated/to be initiated in support of
the instant purchase request or anticipated future requirements (see also FAR and DLAD
10.001 and 11.004):

Provision for Competition

- a. Complete, unrestrictive technical data package to be included or referenced in the
solicitation. _____ Yes _____ No
- b. Full and Open Competition.....

c. Full and Open Competition After Exclusion of Sources

d. Other than Full and Open Competition 10 U.S.C.2304(c).....
(Except for acquisitions conducted under category c. above, when the response to a. is "No," the acquisition is other than full and open competition and a justification for other than full and open competition is normally required (see FAR Subpart 6.3). No justification is required for small business set-asides (see 6.203(b)(90)).

Schedule: Date:.....

Issue Solicitation
Open/Close
Solicitation Evaluate/Review
Award
Remarks:
Signature Buyer: Date:
Signature Approving Official:..... Date:

SUBPART 90.12 - POSTAWARD PRICE REVIEWS

90.1201 Simplified acquisition price review program.

(a) Defense Supply Centers shall perform a monthly postaward price analysis of 60 line items from separate awards, selected from the total universe of the previous month's central simplified acquisitions (excluding purchases by secondary and tertiary field activities). The review shall be performed by the DSC Cost and Price Analysis Element. The purpose of this program is to identify significant and/or repetitive overpricing and to take corrective action as may be required including feedback on contracting deficiencies noted during the reviews. When an unreasonable price is indicated, appropriate action to resolve the overpricing shall be taken, including action pursuant to Subpart 42.71, if applicable. A review of an item is to be deemed completed only when a determination has been reached that overpricing: (1) did not occur; or, (2) did occur, and a refund has been collected and processed; or, (3) did occur, but all efforts to obtain a refund were unsuccessful, and a decision has been made that no further action is warranted. Other steps, such as initiating action for competitive acquisition of previously sole source items and/or revision of specifications, shall also be accomplished as needed.

(b) A record of postaward price analysis results, including the information necessary to provide summary data contained in the following format, shall be maintained by the Cost and Price Analysis Element.

SIMPLIFIED ACQUISITION POSTAWARD PRICE REVIEW PROGRAM

Defense Supply Center _____

Report for the _____ Period FY **200** ____

I.	Review Reconciliation:	Number
	A. Beginning Balance Reviews in Process:	
	B. Reviews Initiated During Quarter:	
	C. Reviews Completed During Quarter:	
	D. Ending Balance Reviews in Process:	
II.	Completed Reviews (from I.C. above):	Automated Manual
	A. Number Determined Not Overpriced:	
	B. Number Determined Overpriced:	
	C. Number for Which Sufficient Price Data Could Not Be Obtained to Make a Determination:	
III.	Corrective Action (from II.B. above):	Number Savings
	A. Price Reductions:	
	B. Refunds:	
	C. Cancellations-Repurchases:	
	D. Other (Specify, e.g., action initiated for competitive acquisition, commercial alternate	

found, action initiated to revise specifications.):

SUBPART 90.13 - STREAMLINED SOLICITATIONS FOR ENERGY CONTRACTS
(DEVIATION)

90.1300 Scope of Subpart.

On 28 June 1990, the then Deputy Assistant Secretary of Defense (Procurement) approved as permanent DLAD coverage the Defense Fuel Supply Center (DFSC)(**now the Defense Energy Support Center, DESC**) deviation request to use streamlined solicitations for petroleum and coal acquisitions. Under the deviation **DESC** is permitted to omit a variety of clauses and substitute tailored clauses for other clauses normally required by FAR and DFARS.

90.1301 - FAR clauses/provisions.

52.219-13 Utilization of Women-Owned Small Businesses. (AUG 1986)

The clause is not necessary to the acquisition of petroleum, petroleum-related services or coal because both subcontracting opportunities and the existence of woman-owned business in these commodities are minimal. **DESC** has retained the certification clause to document those businesses that are women-owned.

52.222-28 Equal Opportunity Preaward Clearance of Subcontracts (APR 1984)

52.244-1 and Alt. I Subcontracts (Fixed Price Contracts) (APR 1991)

These clauses are not applicable to petroleum, petroleum-related services or coal because contracts are fixed price or fixed price with economic price adjustment and unpriced modifications are not issued.

52.227-1 Authorization and Consent (APR 1984)

52.227-2 Notice and Assistance Regarding Patent and Copyright
Infringement (APR 1984)

These clauses are not necessary to the acquisition of petroleum, petroleum-related services, or coal because patent considerations are not involved.

52.229-3 Federal, State, and Local Taxes (JAN 1991)

52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract)
(JAN 1991)

52.229-5 Taxes - Contracts Performed in U.S. Possessions or Puerto Rico.
(APR 1984)

A substitute **DESC** clause was developed to simplify, consolidate and tailor the FAR clauses to petroleum, petroleum related services, and coal. The FAR clauses only address after imposed/after relieved Federal taxes and do not address such circumstances for state and local taxes applicable to **DESC** procurement. The FAR clauses also require contract prices inclusive of all applicable Federal, State and local taxes. This is not acceptable to **DESC** since some taxes at all levels are excluded from certain fuel products under Government use criteria in the Internal Revenue codes.

52.247-1 Commercial Bill of Lading Notations (APR 1984)

This clause is not necessary because the Government does not require prepayment of freight charges on petroleum or coal shipments.

52.247-54 Diversion of Shipment under F.O.B. Destination Contracts
(MAR 1989)

This clause is not necessary to the acquisition of petroleum because this area is covered in other **DESC** transportation clauses. The portions of this clause covering the use of paid freight bills to evidence delivery do not apply to petroleum shipments. Petroleum product deliveries are evidenced by delivery ticket copies and properly executed DD Forms 250. The portions of the clause limiting truck shipment reimbursement to 70% of the lowest published tariff is inappropriate for petroleum. Equitable adjustments for transportation are accomplished consistent with the methodology used to evaluate transportation.

ADDITIONAL CLAUSES TO BE OMITTED

52.214-6 Explanation to Prospective Bidders (APR 1984)
 52.214-9 Failure to Submit Bid (APR 1984)
 52.214-3 Amendments to Invitations for Bids (DEC 1989)
 52.214-12 Preparation of Bids (APR 1984)
 52.227-3 Patent Indemnity (APR 1984)
 52.246-23 Limitation of Liability (APR 1984)

These clauses are excluded from **DESC** streamlined solicitations because they are superfluous to **DESC** contracting or serve no useful purpose. Instructions for submitting amendments are sent with the amendments themselves. Fuel specifications require no explanation. Bid/offer preparations guidance is included in the schedule. Elaborate proposals are not a possibility. Patent and liability limitations are not applicable.

52.214-14 Place of Performance - Sealed Bid (APR 1985)
 52.215- 6 Place of Performance (APR 1984)

When a bidder or offeror submits a bid or offer, either the offeror tells us where the place of performance is located, or it is of no consequence. As a result, this clause serves no useful purpose in **DESC** contracts.

52.246-1 Contractor Inspection Requirements (APR 1984)

This clause was streamlined out of non-petroleum contracts only (coal and services). The subject matter in this clause is covered by other **DESC** clauses.

52.247-29 F.O.B. Origin (Jun 1988)
 52.247-30 F.O.B. Origin, Contractor's Facility (APR 1984)
 52.247-31 F.O.B. Origin, Freight Allowed (JUN 1988)
 52.247-32 F.O.B. Freight Prepaid (JUN 1988)
 52.247-59 F.O.B. Origin - Carload and Truckload Shipments (APR 1984)

The subject matter of these clauses is contained in **DESC** special transportation clauses.

52.219-14 Limitations on Subcontracting (JAN 1991)

Domestic bulk petroleum requires small business manufacturers offering on set-aside requirements to refine at least 90% of the offered quantity. This is pursuant to 49 Federal Register 5037, February 9, 1984 (13 C.F.R. 121.2, fn. 4 (1989)). This clause is unnecessary in domestic bulk petroleum contracts.

52.219-15 Notice of Participation by Organizations for the Handicapped
 (APR 1991)

Handicapped organizations do not supply any products or services acquired by **DESC**.

90.1302 - DFARS Clauses/Provisions.

252.243-7001 Pricing of Contract Modifications (DEC 1991)

The price of petroleum is based on market-conditions, not cost, thus making this clause unnecessary for **DESC**.

252.247-7022 Representation of Extent of Transportation by Sea (AUG 1992)
 252.247-7023 Transportation of Supplies by Sea (DEC 1991)
 252.247-7024 Notification of Transportation of Supplies by Sea (DEC 1991)

These clauses are unnecessary in acquisitions for petroleum, petroleum related services, and coal. Domestic acquisitions rarely, if ever, involve supplies which have been transported from outside the United States by sea. Overseas bunkers, into-plane, and storage also do not involve ocean transportation. Nearly all shipments to overseas posts, camps, and stations take place by land; those few made by water are nearly all within foreign territorial waters and therefore subject to foreign cabotage laws, so that no U.S.-flag vessels are available. Bulk fuels shipments are rarely on other than an f.o.b. origin basis, so that ocean shipment of end items is managed by the Military Sealift Command.

90.1303 **DESC** clauses/provisions

The following DESC tailored clauses have been approved for use in the Streamlined solicitations.

- 52.229-9F**15** Federal, State and Local Taxes (Deviation)(DESC) (**NOV 93**)
52.246-9F**C3** Quality Provisions (Coal) (DESC) (**OCT 97**)
52.247-9F**A1** Delivery Conditions for Tank Cars, Boxcars, Trucks,
Transport Trucks, Trucks and Trailers **Tank Wagons, Pipeline or Lighters**
(DESC) (**NOV 96**)
52.247-9F**H1** Shipment and Routing (DESC) (NOV 72)

SUBPART 90.14 - RECOUPMENT ACTIVITY REPORTING

90.1400 Sample reporting.

Illustrative recoupment activity reports are provided as follows:

15 April 1995 Report

A. FY95, 1st QTR

1. Recoupments

- a. \$ _____ nonconformances reported/records established between
October & December 1994
b. \$ _____ demanded/requested against this amount
c. \$ _____ recouped against this amount

2. Express warranties

- a. \$ _____ nonconformances reported/records established between
October & December 1994, for which the warranty period was
still in effect
b. \$ _____ demanded against this amount
c. \$ _____ recouped against this amount

3. Recoupment breakdown (A1c + A2c)

- a. \$ _____ part of (A1c + A2c) covered by monetary reimbursement
b. \$ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd QTR

1. Recoupments

- a. \$ _____ nonconformances reported/records established between
January & March 1995
b. \$ _____ demanded/requested against this amount
c. \$ _____ recouped against this amount

2. Express warranties

- a. \$ _____ nonconformances reported/records established between
January & March 1995, for which the warranty period was
still in effect
b. \$ _____ demanded against this amount
c. \$ _____ recouped against this amount

3. Recoupment breakdown (B1c + B2c)

- a. \$ _____ part of (B1c + B2c) covered by monetary reimbursement
b. \$ _____ part of (B1c + B2c) covered by replacements

CUMULATIVE:

1. Recoupments

- a. \$ _____ nonconformances reported/records established between Oct
1994 & March 1995 (A1a + B1a)

- b. \$ _____ demanded/requested against this amount (A1b + B1b)
- c. \$ _____ recouped against this amount (A1c + B1c)
- 2. Express warranties
 - a. \$ _____ nonconformances reported/records established between Oct 1994 & March 1995, for which the warranty period was still in effect (A2a + B2a)
 - b. \$ _____ demanded against this amount (A2b + B2b)
 - c. \$ _____ recouped against this amount (A2c + B2c)
- 3. Recoupment breakdown (A1c + B1c + A2c + B2c)
 - a. \$ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a)
 - b. \$ _____ part of the overall total recoupment covered by replacements (A3b + B3b)

31 July 1995 Report

A. FY95, 1st QTR

- 1. Recoupments
 - a. \$ _____ nonconformances reported/records established between October & December 1994
 - b. \$ _____ demanded/requested against this amount
 - c. \$ _____ recouped against this amount
- 2. Express warranties
 - a. \$ _____ nonconformances reported/records established between October & December 1994, for which the warranty period was still in effect
 - b. \$ _____ demanded against this amount
 - c. \$ _____ recouped against this amount
- 3. Recoupment breakdown (A1c + A2c)
 - a. \$ _____ part of (A1c + A2c) covered by monetary reimbursement
 - b. \$ _____ part of (A1c + A2c) covered by replacements

B. FY95, 2nd QTR

- 1. Recoupments
 - a. \$ _____ nonconformances reported/records established between January & March 1995
 - b. \$ _____ demanded/requested against this amount
 - c. \$ _____ recouped against this amount
- 2. Express warranties
 - a. \$ _____ nonconformances reported/records established between January & March 1995, for which the warranty period was still in effect
 - b. \$ _____ demanded against this amount
 - c. \$ _____ recouped against this amount
- 3. Recoupment breakdown (B1c + B2c)
 - a. \$ _____ part of (B1c + B2c) covered by monetary reimbursement
 - b. \$ _____ part of (B1c + B2c) covered by replacements

C. FY95, 3rd QTR

- 1. Recoupments
 - a. \$ _____ nonconformances reported/records established between April & June 1995
 - b. \$ _____ demanded/requested against this amount
 - c. \$ _____ recouped against this amount

2. Express warranties

- a. \$ _____ nonconformances reported/records established between April & June 1995, for which the warranty period was still in effect
- b. \$ _____ demanded against this amount
- c. \$ _____ recouped against this amount

3. Recoupment breakdown (C1c + C2c)

- a. \$ _____ part of (C1c + C2c) covered by monetary reimbursement
- b. \$ _____ part of (C1c + C2c) covered by replacements

CUMULATIVE:

1. Recoupments

- a. \$ _____ nonconformances reported/records established between Oct 1994 & June 1995 (A1a + B1a + C1a)
- b. \$ _____ demanded/requested against this amount (A1b + B1b + C1b)
- c. \$ _____ recouped against this amount (A1c + B1c + C1c)

2. Express warranties

- a. \$ _____ nonconformances reported/records established between Oct 1994 & June 1995, for which the warranty period was still in effect (A2a + B2a + C2a)
- b. \$ _____ demanded against this amount (A2b + B2b + C2b)
- c. \$ _____ recouped against this amount (A2c + B2c + C2c)

3. Recoupment breakdown (A1c + B1c + C1c + A2c + B2c + C2c)

- a. \$ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a + C3a)
- b. \$ _____ part of the overall total recoupment covered by replacements (A3b + B3b + C3b)

Continue in this manner according to the following schedule:

Report Date	Period Covered	Number of Qtrs. (plus cumulative)
31 Oct 95	Oct 94 - Sep 95	4
31 Jan 96	Oct 94 - Dec 95	5
30 Apr 96	Oct 94 - Mar 96	6
31 Jul 96	Oct 94 - Jun 96	7
31 Oct 96	Oct 94 - Sep 96	8
31 Jan 97	Oct 94 - Dec 96	9
30 Apr 97	Oct 94 - Mar 97	10
31 Jul 97	Oct 94 - Jun 97	11
31 Oct 97	Oct 94 - Sep 97	12
31 Jan 98	Jan 95 - Dec 97	12
30 Apr 98	Apr 95 - Mar 98	12

The following is how the 31 Oct 97 report, for example, would look:

31 Oct 1997 Report

A. FY95, 1st QTR

1. Recoupments

- a. \$ _____ nonconformances reported/records established between October & December 1994
- b. \$ _____ demanded/requested against this amount
- c. \$ _____ recouped against this amount

2. Express warranties

- a. \$ _____ nonconformances reported/records established between October & December 1994, for which the warranty period was still in effect

- b. \$ _____ demanded against this amount
 - c. \$ _____ recouped against this amount
- 3. Recoupment breakdown (A1c + A2c)
 - a. \$ _____ part of (A1c + A2c) covered by monetary reimbursement
 - b. \$ _____ part of (A1c + A2c) covered by replacements
- B. FY95, 2nd QTR
 - 1. Recoupments
 - a. \$ _____ nonconformances reported/records established between January & March 1995
 - b. \$ _____ demanded/requested against this amount
 - c. \$ _____ recouped against this amount
 - 2. Express warranties
 - a. \$ _____ nonconformances reported/records established between January & March 1995, for which the warranty period was still in effect
 - b. \$ _____ demanded against this amount
 - c. \$ _____ recouped against this amount
 - 3. Recoupment breakdown (B1c + B2c)
 - a. \$ _____ part of (B1c + B2c) covered by monetary reimbursement
 - b. \$ _____ part of (B1c + B2c) covered by replacements
- C. FY95, 3rd QTR
 - 1. Recoupments
 - a. \$ _____ nonconformances reported/records established between April & June 1995
 - b. \$ _____ demanded/requested against this amount
 - c. \$ _____ recouped against this amount
 - 2. Express warranties
 - a. \$ _____ nonconformances reported/records established between April & June 1995, for which the warranty period was still in effect
 - b. \$ _____ demanded against this amount
 - c. \$ _____ recouped against this amount
 - 3. Recoupment breakdown (B1c + B2c)
 - a. \$ _____ part of (B1c + B2c) covered by monetary reimbursement
 - b. \$ _____ part of (B1c + B2c) covered by replacements
- D. FY95, 4th QTR (Report the same categories of information)
- E. FY96, 1st QTR (Report the same categories of information)
- *** }
 } (The asterisks represent all quarters from FY96, 2nd QTR
 *** } through FY97, 3rd QTR.)
- L. FY97, 4th QTR
 - 1. Recoupments
 - a. \$ _____ nonconformances reported/records established between July & Sep 1997
 - b. \$ _____ demanded/requested against this amount
 - c. \$ _____ recouped against this amount
 - 2. Express warranties

- a. \$ _____ nonconformances reported/records established between July & Sep 1997, for which the warranty period was still in effect
- b. \$ _____ demanded against this amount
- c. \$ _____ recouped against this amount

3. Recoupment breakdown (L1c + L2c)

- a. \$ _____ part of (L1c + L2c) covered by monetary reimbursement
- b. \$ _____ part of (L1c + L2c) covered by replacements

CUMULATIVE:

1. Recoupments

- a. \$ _____ nonconformances reported/records established between Oct 1994 & Sep 1997 (A1a + B1a + C1a + D1a + E1a + F1a + G1a + H1a + I1a + J1a + K1a + L1a)
- b. \$ _____ demanded/requested against this amount (A1b + B1b + C1b + D1b + E1b + F1b ... L1b)
- c. \$ _____ recouped against this amount (A1c + B1c + C1c + D1c + E1c + F1c ... L1c)

2. Express warranties

- a. \$ _____ nonconformances reported/records established between Oct 1994 & Sep 1997, for which the warranty period was still in effect (A2a + B2a + C2a + D2a + E2a + F2a + G2a + H2a + I2a + J2a + K2a + L2a)
- b. \$ _____ demanded against this amount (A2b + B2b + C2b + D2b + E2b + F2b ... L2b)
- c. \$ _____ recouped against this amount (A2c + B2c + C2c + D2c + E2c + F2c ... L2c)

3. Recoupment breakdown (A1c + B1c + C1c + D1c + E1c + F1c + G1c + H1c + I1c + J1c + K1c + L1c + A2c + B2c + C2c + D2c + E2c + F2c + G2c + H2c + I2c + J2c + K2c + L2c)

- a. \$ _____ part of the overall total recoupment covered by monetary reimbursement (A3a + B3a + C3a + D3a + E3a + F3a ... L3a)
- b. \$ _____ part of the overall total recoupment covered by replacements (A3b + B3b + C3b + D3b + E3b + F3b ... L3b)

NOTE: Three dots (...) represent the intervening fiscal quarters, all of which should be reported.

APPENDIX E

DoD SPARE PARTS BREAKOUT PROGRAM

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PART 1 - GENERAL

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PART 2 - BREAKOUT CODING

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PART 1 - GENERAL

E-101 Applicability.

(a)(i) All DLA DSCs except that DESC and DSCP C&T, Medical and Subsistence will implement only those portions of the DFARS as is feasible in the reduction of noncompetitive parts.

PART 2 - BREAKOUT CODING

E-201.1 Acquisition method codes (AMC)/Acquisition methods suffix codes (AMSC).

(a) A competitive AMC (1 or 2) shall be assigned to a part when a complete technical data package is available, or when there are two or more approved independent manufacturing sources, or when an independent manufacturing prime and the actual manufacturer both independently contend for contracts.

(b) When parts are received that are coded AMC 5, care shall be taken to assure that solicitation is accomplished only with the identified prime contractor despite the CAGE identification to the actual manufacturer. These parts should be considered likely candidates for breakout to direct purchase from AMC 5 to AMC 4.

E-202 Assignment of codes.

In the case of parts with an assigned AMSC of U or V, if another source is approved, but a complete technical data package for unrestricted competition is not available, the AMC will be changed to 2 and the AMSC will be changed to AMSC C or R, or other, as appropriate. Only valid combinations of AMC/AMSCs shall be entered into the Contracting Technical Data File (see DFARS exhibit I).

E-203 Improving part status.

(b) Code Suspension Date. A 1 -year code suspension validation date will be assigned to parts with an ASMC or A, H, or Y regardless of the AMC. A 3-year suspension date will be assigned to parts having an AMSC of C, U, or V. A 5-year suspension date will be assigned to parts with an AMSC of B, P, or R and parts with an AMC/AMSC of M or 4M. Parts with an assigned AMC/AMSC of 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, or 2T and those with an AMC/AMSC of 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, or 2T and those with an AMSC of L need not be subject to the code suspension validation. Exceptions may be made on a case-by-case basis as necessary. Suspension dates should not be changed merely to update the assigned date but should be made in conjunction with a review or screen based upon an anticipated forecast or immediate buy action. Buys shall not be held up simply to review the part for application of a new suspension date, unless the

contracting officer determines that the buy can be held up until the review and any breakout action is completed (see DFARS Appendix E -105 (e)(2)).

PART 3 - IDENTIFICATION, SELECTION, AND SCREENING OF PARTS

E-301 Identification and selection procedures.

E-301.2 Annual buy forecasts.

An annual projection of estimated buy activity prepared quarterly shall be used to initially list parts in descending buy dollar order down to \$5,000 reflecting projections for the next 12 months. These projections shall be the basis for selecting items to be screened for possible breakout. Care shall be taken to assure that an item selected in this manner is not redundant with planned or ongoing breakout activity in another program/effort, such as, but not limited to, Value Engineering and Evaluation of Alternate Offers.

E-302 Screening.

(a) When results of a screening action indicate there is no expectation of breakout, consideration should be given, where applicable, to any other ongoing programs that may improve price or lead time. Examples of such other programs include, but are not limited to, Value Engineering and the Competition Advocate Program. A folder shall be maintained for all screened parts to include any pertinent reports, analysis, documents, etc., that relate to the assigned AMC/AMSC (see DFARS Appendix E-302(i)).

E-303 Full Screening procedure.

E-303.2 Data evaluation phase (steps 2 -14).

(c)(4) Prior to expenditure of funds for acquisition of technical data to effect a breakout action, a review of data requirements shall be conducted in accordance with DLAM 4185.14, DLA Technical Data Management Program. When there is any doubt as to acceptability by the cognizant Military Service of data to be acquired to effect the desired AMC/AMSC change, the data shall not be procured by the DSC. Instead, all breakout activity for the part shall be summarized and forwarded to the cognizant Military Service activity with a recommendation that they pursue acquisition of the necessary data (see DFARS Appendix E -303.2(c)(4)).

PART 5 - REPORTING SYSTEM

E-502 Reporting procedures.

(c) ICPs shall forward reports to HQ DLA, ATTN: ***DLA Spare parts Breakout program manager (DLSC-LEP)***, no later than 30 days after the end of each period designated.